

PUBLIC HEARING
COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.
DATE: August 24, 2000
PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By:

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A P P E A R A N C E S

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COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

ALBERT P. "AL" BELTRAMI,
Public Member

WILLIAM SHERWOOD,
Representative for PHILIP ANGELIDES
State Treasurer's Office

JOANN STEINMEIER,
School Board Member
Arcadia Unified School District

HEATHER A. HALSEY,
Legislative Analyst and Associate Deputy
Special Counsel to the Legal Affairs Secretary
Office of Governor Gray Davis
Planning and Research

CINDI ARONBERG,
Deputy State Controller
Representative for KATHLEEN CONNELL, State Controller
State Controller's Office

JOHN S. LAZAR,
Acting Director of Office Planning and Research

COMMISSION STAFF PRESENT

PAULA HIGHASHI, Executive Director

PAT HART JORGENSEN, Chief Legal Counsel

DAVID SCRIBNER, Staff Counsel

SEAN AVALOS, Staff Counsel

CAMILLE SHELTON, Staff Counsel

A P P E A R A N C E S

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PUBLIC TESTIMONY

LEONARD KAYE, Certified Public Accountant,
Office of Auditor-Controller, Accounting Division
(Representing County of Los Angeles)

TOM LAING, Captain, County of Los Angeles Sheriff's
Department, Career Development Bureau

RANDALL J. OLSON, Lieutenant, County of Los Angeles Sheriff's
Department, Career Resources/Affirmative Action Unit

JAMES W. MILLER, Assistant Program Budget Manager, Department
of Finance

AMBER D. PEARCE, Budget Analyst, Department of Finance

HAL SNOW, Representative from POST

JIM WRIGHT, Supervising Deputy Probation Officer, County of
Los Angeles, Probation Department, Specialized Domestic
Violence Monitoring Unit

CHERYL STEWART, Department of Finance

WAYNE STAPLEY, Representing Bakersfield City School District

LAWRENCE HENDEE, Coordinator/Mandated Costs, Sweetwater Union
High School District

JEFFREY H. BELL, Principal Program Budget Analyst, Department
of Finance

BARBARA TAYLOR, Department of Finance

JAMES A. CUNNINGHAM, Legislative Mandate Specialist
San Diego City Schools, Education Center

CAROL A. BERG, Ph.D., Executive Vice President
School Services of California, Inc.

FRANK TERSTEGGE, Director of Special Education, Paradise
Unified School District

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A P P E A R A N C E S

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GAIL CAFFERATA, Behavior Consultant, Butte County Office of Education, SELPA

DANIEL G. STONE, Deputy Attorney General, State of California, Department of Justice, Office of the Attorney General

NONA MARTINEZ, Department of Finance

KEITH PETERSEN, MPA, JD, President, SixTen and Associates, Mandate Reimbursement Services
(Interested Party on Item 9)

SEAN SILVA, State Controller's Office

JEFF YEE, Section Manager, Local Reimbursements, Division of Accounting and Reporting, Representative for Kathleen Connell, State Controller

PETE CERVINKA, Department of Finance

ALLAN BURDICK, CSAC, League of Cities' Advisory on State Mandates

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1 BE IT REMEMBERED that pursuant to notice and
2 on Thursday, the 24th day of August, 2000, commencing at the
3 hour of 9:30 a.m. thereof, at the State Capitol, Room 126,
4 Sacramento, California, before me, Stacey L. Heffernan, a
5 Certified Shorthand Reporter in and for the State of
6 California, the following proceedings were had:

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8 CHAIRPERSON PORINI: All right. We'll go ahead and
9 start the hearing on state mandates.

10 May I have role call.

11 MS. HIGASHI: Ms. Aronberg?

12 MS. ARONBERG: Cindi Aronberg, here.

13 MS. HIGASHI: Mr. Beltrami?

14 MR. BELTRAMI: Here.

15 MS. HIGASHI: Ms. Halsey?

16 MS. HALSEY: Here.

17 MS. HIGASHI: Mr. Lazar?

18 MR. LAZAR: Here.

19 MS. HIGASHI: Mr. Sherwood?

20 MR. SHERWOOD: Here.

21 MS. HIGASHI: Ms. Steinmeier?

22 MS. STEINMEIER: Here.

23 MS. HIGASHI: Ms. Porini?

24 CHAIRPERSON PORINI: Here.

25 Our first item of business will be approval of the

1 minutes, and we have two separate minutes.

2 MS. HIGASHI: Item one is the minutes -- are the
3 minutes for June 29th, 2000.

4 CHAIRPERSON PORINI: All right. Any questions or
5 comments from members?

6 MR. BELTRAMI: Move approval, Madam Chair.

7 MS. STEINMEIER: Second.

8 CHAIRPERSON PORINI: We have a motion and a second.
9 All those in favor indicate with "aye."
10 (Commissioners answered "aye" unanimously.)

11 CHAIRPERSON PORINI: Opposed?
12 (No response.)

13 CHAIRPERSON PORINI: The minutes carry.
14 The second item.

15 MS. HIGASHI: Item 2, the minutes for July 27th,
16 2000.

17 CHAIRPERSON PORINI: Questions or comments?

18 MS. STEINMEIER: Move approval.

19 CHAIRPERSON PORINI: We have a motion.
20 MR. BELTRAMI: Second.

21 CHAIRPERSON PORINI: And a second.
22 All those in favor indicate with "aye."
23 (Commissioners answered "aye" unanimously.)

24 CHAIRPERSON PORINI: Opposed?
25 (No response.)

1 CHAIRPERSON PORINI: Motion carries.

2 That takes us to our consent calendar.

3 MS. HIGASHI: Our proposed consent calendar. This

4 item includes all the proposed statements decision, Item 10,

5 Item 11, Item 12, Item 13, Item 14, Item 15, and Item 16, and

6 there's one correction to be made on Item 16, and that's just

7 to add Marcia Faulkner, County of San Bernardino, as a

8 witness. Her name was inadvertently left off. And we have

9 received no indications of opposition to this calendar.

10 CHAIRPERSON PORINI: All right. Does anyone wish to

11 remove anything from the consent calendar?

12 MS. STEINMEIER: I move approval of the consent

13 calendar.

14 MR. SHERWOOD: Second.

15 CHAIRPERSON PORINI: We have a motion and a second.

16 All those in favor indicate with "aye."

17 (Commissioners answered "aye" unanimously.)

18 CHAIRPERSON PORINI: Opposed?

19 (No response.)

20 CHAIRPERSON PORINI: Consent calendar carries.

21 MS. HIGASHI: All right. This brings us to our

22 first test claim, but, before we do our first test claim, I'd

23 like to continue our practice of having all of the potential

24 witnesses for all of the hearing items this morning to please

25 stand.

1 (Whereupon potential witnesses stand.)

2 MS. HIGASHI: Do you solemnly swear or affirm that
3 the testimony which you're about to give is true and correct
4 based upon your personal knowledge, information and belief?

5 (Witnesses answered "I do" unanimously.)

6 MS. HIGASHI: Our first test claim item is Item 3.
7 This item will be presented by Ms. Shelton.

8 CHAIRPERSON PORINI: All right. Camille.

9 MS. SHELTON: "This test claim addresses the basic
10 training requirement for peace officer recruits.

11 "Before an individual can exercise the powers of a
12 peace officer, the individual is required to complete a basic
13 training course approved by POST. The test claim statute
14 requires that the basic training course for recruits include
15 adequate instruction on racial and cultural diversity.

16 "Staff finds that the test claim statute is not
17 subject to article XIII B, section 6 of the California
18 Constitution because the requirement to complete the basic
19 training course on racial and cultural diversity is a mandate
20 imposed only on the individual who seeks peace officer
21 status. The test claim statute does not impose any mandated
22 duties or activities on the local agency.

23 "Staff acknowledges that some local agencies, such
24 as the claimant, employ persons who have not yet completed a
25 basic training course, and then sponsor or provide the

1 training themselves. However, there are no provisions in the
2 test claim statute, or other statutes or regulations issued
3 by POST requiring local agencies to provide or pay for basic
4 training, including the training on racial and cultural
5 diversity. Instead, there are several community colleges
6 approved by POST offering basic training academy courses,
7 including the course at issue here, that are open to any
8 individual.

9 "Accordingly, staff recommends that the Commission
10 deny this test claim because the test claim statute is not
11 subject to article XIII B, section 6 of the California
12 Constitution.

13 "Only if the Commission disagrees with staff's
14 finding in this regard should the Commission make findings on
15 Issue 2 and determine whether the test claim statute imposes
16 a new program or higher level of service, and imposes costs
17 mandated by the state."

18 Will the parties and witnesses please state your
19 name for the record.

20 MR. KAYE: Leonard Kaye, County of Los Angeles.

21 MR. LAING: Tom Laing, Captain, L.A. County
22 Sheriff's Department.

23 MR. OLSON: Randy Olson, Lieutenant, L.A. County
24 Sheriff's Department.

25 MR. MILLER: Jim Miller, Department of Finance.

1 MS. PEARCE: Amber Pearce, Department of Finance.

2 CHAIRPERSON PORINI: All right. Would the claimants
3 like to begin?

4 Mr. Kaye?

5 MR. KAYE: Thank you. Good morning. We agree with
6 POST that the test claim legislation imposed a mandate on
7 training academies operated by the County of Los Angeles and
8 community colleges and, of course, other police agencies.
9 This mandate is to provide, to undertake, to implement racial
10 and cultural diversity training in a law enforcement
11 workplace as specified by the legislature.

12 We also agree with Commission staff when they say
13 that the requirement or mandate to complete training is
14 imposed on the recruit; however, we did not file a test claim
15 on the mandate to complete training. We filed, in our claim,
16 on the mandate to provide training. And the relevant inquiry
17 here is on whether or not we must provide it, not on whether
18 or not recruits must complete it.

19 Now, staff claim, on page 10 of their analysis, that
20 the test claim statute does not specify who is required to
21 provide the basic training course. However, to us, it is
22 obvious. Basic training academies must provide this course;
23 indeed, only basic training academies can provide this
24 course.

25 The Legislature need not state the obvious, repeat

1 and recite California's basic training scheme in every
2 passing measure. Such a mandate was obvious to us; it is
3 obvious to POST; indeed, it was obvious to all basic training
4 academies in California. We all complied. And who are we?

5 We are cities, counties, community colleges that
6 operate basic training academies; the same cities, counties
7 and community colleges that are eligible for states of
8 mention under article XIII B, section 6 of the California
9 Constitution.

10 Thus, our costs were incurred in doing what the
11 Legislature wanted done in providing, in their view, vitally
12 important training, and, in our view, these training costs
13 are reimbursable costs mandated by the state.

14 Tell us more, Captain.

15 MR. LAING: Good morning. I am, currently, the
16 captain of our department's career development bureau, and
17 one of my responsibilities is overseeing our affirmative
18 action unit. We are currently developing a model diversity
19 program, that we are doing it at the direction of our
20 sheriff, Lee Baca, in conjunction with the county, and I
21 share that with you because it comes out of the heels of the
22 time where we had had a very constructive education program
23 over the last several years in the area of cultural diversity
24 beginning at the recruit level.

25 We, as the department, clearly saw the nexus between

1 the training, as offered through this cultural diversity
2 program, and the service we're expected to provide the
3 residents of L.A. County, especially as diverse as we are.

4 And I would like to share -- now introduce you to
5 Lieutenant Randy Olson, though I'll take any questions you
6 may have, to share with you what curriculum we developed.
7 The curriculum we developed exceeded the expectations because
8 of the emphasis we placed on this training to our officers
9 when they eventually go out and provide the services to the
10 community of L.A. County.

11 But I'll -- please feel free to entertain any
12 questions that you might have.

13 CHAIRPERSON PORINI: All right. Next witness.

14 MR. OLSON: Hi. Back in 1992, we, at the direction
15 of POST, and our sheriff at the time, assembled a committee,
16 a cultural awareness committee, and the purpose of that
17 committee -- it had members of not only our department but
18 also members of the community, and one of their main
19 responsibilities was to help develop a curriculum that they
20 felt would be -- would educate our deputy sheriffs who work
21 in the field and in our custody and court services, provide
22 them enough training to be able to do their job effectively
23 and with the proper service level and empathy.

24 So what they developed with the curriculum was a
25 16-hour program that we implemented for -- initially for our

1 academy, as well as in service.

2 The first four hours of the training dealt with,
3 basically, general discrimination, understanding; it got into
4 some Title 7 issues, as well as some regulations from the
5 Department of Fair Employment and Housing, and we felt that,
6 internally, our deputies -- the way we treat our deputies
7 will have a direct correlation to the way they treat the
8 public. So the first four hours of the training dealt with
9 just basic elements of discrimination, awareness, tolerance,
10 empathy, and treatment of each other.

11 Then we added an additional 12 hours that dealt,
12 specifically, with how our deputies could interact with
13 specific ethnic groups that we police in the community, and
14 so that's why we felt that in addition to what POST had
15 recommended we took members of the community and enhanced the
16 training, and that's why we came up with, for our recruits,
17 24 hours of training specifically in cultural awareness.

18 CHAIRPERSON PORINI: All right. Questions?

19 Department of Finance?

20 MS. PEARCE: We basically concur with the staff
21 analysis. I think the issue, for us, was that the
22 legislation specifies that the training is a responsibility
23 of the individual. It doesn't specify who is responsible for
24 giving the training, so, in that sense, we do concur with the
25 staff analysis.

1 CHAIRPERSON PORINI: Okay. Any questions from
2 members?
3 Ms. Steinmeier?
4 MS. STEINMEIER: For the gentleman from POST,
5 Mr. Snow? Is he here? No one from POST is here at all? Oh,
6 there he is. I wanted to ask someone from POST because
7 training is their business.
8 CHAIRPERSON PORINI: That's right.
9 MS. STEINMEIER: My question for you centers around
10 a basic problem: Who's responsible for training? In most
11 cases -- now, I'm thinking of firefighters and teachers and
12 other people, although, maybe, their employer may give them
13 assistance -- who's fundamentally responsible for the
14 training, this or basic training?
15 CHAIRPERSON PORINI: Would you please state your
16 name?
17 MR. SNOW: Yes. My name is Hal Snow, assistant
18 executive director of POST. In the case of law enforcement,
19 um, the -- all of the requirements that had come down from
20 the Legislature over the years have been provided by their
21 employing agencies or local community colleges, and,
22 essentially, officers are sent, on duty, to attend the
23 training, and they do not complete the training on their own
24 or at their own expense or volition; that's been the history
25 of -- in California.

1 MS. STEINMEIER: Thank you.

2 CHAIRPERSON PORINI: Other questions from members?

3 MR. BELTRAMI: Mr. Snow --

4 CHAIRPERSON PORINI: Mr. Beltrami?

5 MR. BELTRAMI: Thank you, Madam Chair.

6 You developed a tape; is that what I understand?

7 MR. SNOW: Some of the training mandates,

8 particularly those that are directed at in-service officers,

9 have been devised in either a videotape or a telecourse

10 format to condense and to expedite the training, and, of

11 course, is consistent with what the Legislature intends for

12 the training.

13 So, yes, we do, in many cases, for in-service

14 training, provide technology-based training.

15 MR. BELTRAMI: And that's a two-hour tape, is that

16 what I understand?

17 MR. SNOW: In this particular case, yes, but there

18 are other -- it varies, depending on the training mandate.

19 MR. BELTRAMI: Does POST consider the two-hour tape

20 adequate for this type of training, diversity training?

21 MR. SNOW: Yes, we do. We -- in the case of video

22 training, tape and telecourse, we assemble subject matter

23 experts from all over California and we look to condense the

24 training and structuring it in such a way that it gets across

25 the essential points.

1 We, of course, leave to the officer and the local
2 presenters, including agencies, the ability to supplement
3 that with other forms of instruction, including classroom and
4 discussion and so forth.

5 MR. BELTRAMI: Mr. Kaye, you have a 24-hour program,
6 is that what I understand?

7 MR. KAYE: For cultural diversity training?

8 MR. BELTRAMI: Yeah.

9 MR. KAYE: Would you care to --

10 MR. LAING: If I may?

11 MR. BELTRAMI: Certainly.

12 MR. LAING: For our in-service, it's 16 hours: 12
13 hours of culture specifics and 4 hours of sexual harassment
14 training. For our recruits, we actually give them 24 hours:
15 4 hours of sexual harassment and 20 hours of cultural
16 awareness training.

17 Because of the, you know, ethnic makeup of our L.A.
18 County, we feel that we need to specialize and provide -- you
19 know, in addition to what POST has given us, we need to
20 expand that because of the demographics of our county.

21 CHAIRPERSON PORINI: Other questions or comments
22 from members?

23 (No response.)

24 CHAIRPERSON PORINI: Do we have a motion?

25 MR. BELTRAMI: Madam Chair?

1 CHAIRPERSON PORINI: Mr. Beltrami?

2 MR. BELTRAMI: I guess I have another question.

3 CHAIRPERSON PORINI: Certainly.

4 MR. BELTRAMI: L.A. County is large enough and so

5 forth that it's elected to do its own training, as I hear, or

6 do you send people to POST, as well?

7 MR. KAYE: Would you care to comment?

8 MR. LAING: We've always done -- taken direction

9 from POST. I've worked in cooperation with them in many --

10 developed many programs. In this particular case, we took

11 exactly what they provided us and augmented that. We

12 supplement it with additional information, always gaining

13 their approval prior to presenting it to our recruits.

14 MR. BELTRAMI: Do you hire people off the street who

15 have gone through a college training course and come there

16 with their POST certificate or basic certificate or does

17 everyone have to go through your training program?

18 MR. LAING: No. We require everybody, unless, as a

19 result of a merger with another agency, which we're currently

20 doing, once in the city and the county -- the City of

21 Compton, for instance, we require all of our officers, who

22 are hired by L.A. County, to go through our training

23 facility.

24 MR. BELTRAMI: Okay.

25 CHAIRPERSON PORINI: Other questions or comments

1 from members?

2 MS. STEINMEIER: I have a question for staff.

3 CHAIRPERSON PORINI: Yes, Ms. Steinmeier.

4 MS. STEINMEIER: The conflict I see here is practice
5 versus law, and I know that Camille mentioned in the
6 beginning that there wasn't a legal requirement.

7 Would you like to expand on that a little bit?

8 MS. SHELTON: Well, a couple of things. It appears
9 to me that the claimant may be changing their claim a little
10 bit. Initially, they were requesting reimbursement for the
11 time for the peace officers to actually go through the
12 training, so, in that respect, an analysis was written as to
13 an employer-employee relationship.

14 And, now, today, Mr. Kaye has testified that they're
15 not -- it seems that they're testifying that they're only
16 asking for the trainer time; is that correct?

17 MR. KAYE: Um --

18 MS. SHELTON: The trainer time to develop the --

19 MR. KAYE: If I may clarify that, as the -- Mr. Snow
20 mentioned, the POST-certified training is provided in any
21 case, whether it's provided by community colleges, whether
22 it's provided by cities and counties and so forth, what we
23 are saying is a very simple concept.

24 We are asking for reimbursement where reimbursement
25 is due. In other words, if the trainer's time was involved

1 at a community college, we feel that that's a reimbursable
2 thing. Community colleges are eligible recipients and they
3 should receive that reimbursement. However, if someone is
4 enrolled in a community college, in a POST-approved program,
5 obviously, they are not on the payroll; they are not
6 employees, so, therefore, they would not be -- the community
7 college -- neither them nor the community college would be
8 entitled to reimbursement but the trainee time.

9 So what we're saying is that, where appropriate,
10 both types of trainer and trainee time would be reimbursable;
11 where it's not appropriate, the trainee time, such as in a
12 community college scenario, would not be reimbursable because
13 there would be no costs to reimburse.

14 MS. SHELTON: Okay. Well, let me just say that
15 there are -- keep in mind that, depending on how the
16 Commission rules on the first issue, there are still three
17 issues that you have to rule on: One, whether it is subject
18 to article XIII B, section 6. So, if you find that it is,
19 you still have to move on and determine if it's a new
20 program, which staff finds that it is a new program; and the
21 third issue is whether or not there are any costs mandated by
22 the state.

23 From the perspective of how the briefs came in, we
24 focused on the training time and determined that there were
25 no costs mandated by the state, and I think we had a

1 recommendation from POST agreeing that there were no costs
2 mandated by the state in that regard.

3 CHAIRPERSON PORINI: I'm wondering if members feel
4 like we ought to go back and expand the analysis, given the
5 kind of change in direction that the claim has taken or in
6 the change of direction from our original analysis?

7 MR. SHERWOOD: Madam Chair?

8 CHAIRPERSON PORINI: Mr. Sherwood.

9 MR. SHERWOOD: I guess my question, along that line,
10 would be whether we can do that based on the claim, and I
11 think we need to hear from staff on that, because, if, we can
12 look at it from this other viewpoint, under the original
13 claim, obviously, we haven't done that at this time, so I
14 feel we need to do that.

15 CHAIRPERSON PORINI: Camille?

16 MS. SHELTON: Well, just to add, that's probably
17 because we have not analyzed the trainer time with respect to
18 costs mandated by the state, so -- and I would probably
19 request from the parties additional briefings on what their
20 claim entails, because it has changed.

21 CHAIRPERSON PORINI: So what's the consensus of the
22 Committee? Should we ask staff to take another look at this
23 or are we prepared to move ahead today?

24 MR. SHERWOOD: I'm not prepared to move ahead based
25 on what I've heard here today.

1 MS. STEINMEIER: I agree.

2 MR. LAZAR: Based on the last meeting -- just as a
3 new member of the Commission, based on the last meeting,
4 there was some sort of similar situation, is it advisable or
5 possible, from precedent, to put this over or should we
6 consider it?

7 CHAIRPERSON PORINI: Yes.

8 MR. LAZAR: Okay.

9 CHAIRPERSON PORINI: Okay. I think that there's a
10 consensus from the members that we would like to hold this
11 item over and have staff proceed to look at the other issues
12 that are raised by Mr. Kaye, go through whatever additional
13 filings that you need to have made by the claimants.
14 Okay.

15 MR. LAZAR: Do you need a vote to do that?

16 CHAIRPERSON PORINI: I don't think so. I think
17 because of --

18 MS. HIGASHI: Just if it's a consensus.

19 MR. LAZAR: Thank you.

20 MS. HIGASHI: This takes us to Item 4, which is
21 similar but not exactly the same.

22 MS. SHELTON: Okay. Item 4 deals with sexual
23 harassment training for new recruits and veteran peace
24 officers, and the test claim is divided into three parts.
25 "Part one addresses subdivision (a) of the test

1 claim statute, which requires POST to develop sexual
2 complaint guidelines for peace officers who are victims of
3 sexual harassment in the workplace. Staff finds that the
4 POST guidelines constitute an executive order, and impose a
5 reimbursable state mandated program on local agencies by
6 requiring" them "to develop a sexual harassment complaint
7 procedure.

8 "Part two addresses subdivision (b) of the test
9 claim statute," which is basically the same issue as Item 3.
10 Again, that statute requires that the course for basic
11 training for peace officer recruits include instruction on
12 sexual harassment. Staff did the same analysis on that as we
13 did on Item 3. Okay?

14 "Part three addresses subdivision (c) of the test
15 claim statute, which requires veteran peace officers to
16 receive supplemental training on sexual harassment by
17 January 1, 1997.

18 "First, staff finds that subdivision (c) is subject
19 to article XIII B, section 6 of the California Constitution
20 because it imposes an obligation on local agencies to provide
21 sexual harassment training when the training occurs during
22 the employee's working hours. The statute also imposes an
23 obligation on local agencies when the training occurs outside
24 the employee's regular working hours, and there is an
25 obligation imposed by an existing memorandum of understanding

1 that requires the employer to pay for continuing education.

2 "Second, staff finds that subdivision (c)
3 constitutes a new program since sexual harassment training
4 was not required before the enactment of the test claim
5 statute.

6 "Finally, staff finds that the Commission has two
7 options for action when determining if subdivision (c)
8 imposes costs mandated by the state. Staff recommends that
9 the Commission select Option 2 and find that subdivision (c)
10 imposes costs mandated by the state for the salaries,
11 benefits, and incidental expenses for each veteran officer to
12 receive a one-time, two-hour course on sexual harassment and
13 the costs from the two-hour course in the form of materials
14 and trainer time.

15 "Accordingly, staff recommends that the Commission
16 approve this test claim as specified in the analysis with
17 respect to subdivisions (a) and (c) only ."

18 Will the parties please state their name for the
19 record.

20 MR. KAYE: Leonard Kaye, County of Los Angeles.

21 MR. LAING: Tom Laing, L.A. County Sheriff's
22 Department.

23 MR. OLSON: Randy Olson, L.A. County Sheriff's
24 Department.

25 MR. MILLER: Jim Miller, Department of Finance.

1 MS. PEARCE: Amber Pearce, Department of Finance.

2 MR. SNOW: Hal Snow, POST.

3 CHAIRPERSON PORINI: Before we get going, if our
4 claimants at the table would recognize our reporter has her
5 back to you, so if you state your name, if you start -- and
6 I'll try to recognize you so that she'll know who's speaking,
7 but if you'd state your name before you begin to speak that
8 would be helpful.

9 All right. Mr. Kaye?

10 MR. KAYE: Thank you. Regarding sexual harassment
11 training, I think it would be good to discuss the subpart --
12 subdivision (b) of section 13519.7 of the Penal Code, and
13 this is the contentious matter regarding, as Camille
14 mentioned regarding the first matter, regarding, basically,
15 training academies and their instruction. In this case, it's
16 for sexual harassment in the law enforcement workplace.

17 We do believe that the test claim legislation
18 imposed a mandate on basic training academies, as we stated
19 before, operated by the County of the Los Angeles, community
20 colleges and other police agencies, and we must undertake,
21 provide, and implement this basic sexual harassment training
22 in the workplace.

23 We, also, as we said before, agree on the scholastic
24 requirements that the aspiring cadet must pass, these
25 requirements, and, again, we'd point out that we did not file

1 a test claim on that issue. We filed the test claim to
2 provide the training, and we did.

3 And we also -- I'd like to further point out in this
4 case that wasn't true in the earlier case that POST did
5 comment on the kind of basic academy training effort that
6 would be required to implement this, and they estimated that
7 four hours of basic academy or sexual harassment training
8 would be required and that the costs for this would be
9 approximately \$147,040 for the cadets' salaries and \$73,520
10 for presentation costs.

11 Now, in addition, we'd like to point out that the --
12 as we did before, the basic training mandate is imposed on
13 cities, counties, and community colleges who operate these
14 programs. Then you should find, as staff pointed out -- if
15 you agree with that, staff pointed out that you should also
16 find that such result and costs are reimbursable.

17 On the other hand, if you find, as staff suggests,
18 that recruits are responsible for providing their own basic
19 training, then such costs are not reimbursable. However, the
20 truth to this alternative would require an assumption that
21 recruits are responsible for providing their own basic
22 training, that students are responsible for telling their
23 instructors what to teach.

24 Clearly, we believe you have one choice, recognize
25 that it is the training academy, not the city, county,

1 community college, that's mandated to provide training and
2 also must be reimbursed its costs.

3 Regarding subdivision (a) of Penal Code 13519.7,
4 that's the mandate in implementing POST's sexual harassment
5 complaint guidelines, we agree with Commission staff that
6 such activities are reimbursable. As noted by Commission
7 staff on page 9 of their analysis, local law enforcement
8 agencies are not required to follow sexual harassment
9 guidelines developed by POST prior to the enactment of the
10 test claim statute; now they are.

11 With regard to subdivision (c), Penal Code section
12 13519.7, requiring local agencies to provide supplementary
13 sexual harassment training to veteran officers, we agree with
14 Commission staff's recommendation that such activities impose
15 reimbursable costs on the local agencies; however, we do not
16 necessarily agree that such training should be limited to one
17 two-hour session but leave these considerations for further
18 examination during the parameters and guidelines phase to
19 follow.

20 Thank you. And, now, here's the captain.

21 CHAIRPERSON PORINI: Captain Laing.

22 MR. LAING: Tom Laing. An additional responsibility
23 that we have is the revision of our current sexual
24 harassment, discrimination and retaliation policy, as well as
25 the development of an educational program that will augment

1 and reinforce what we started when the statute was initially
2 enacted.

3 And I'd like to focus, in a moment, on the recruit
4 training because we, as a department, take responsibility for
5 our recruits when they come on the workplace on the first
6 day. We believe there is a direct nexus between them, as an
7 employee, though they're not a peace officer yet, and their
8 relationship to the department, because they are in the
9 workplace, and we're responsible for their conduct and we
10 need to make available to them, even though they're recruits,
11 the reporting processes that are available to them if they
12 believe they are the victim of harassment, discrimination, or
13 retaliation.

14 And I'd like to have Lieutenant Randy Olson, who's
15 one of our primary instructors in this area for the last
16 several years, to share with you the curriculum we developed
17 and how we exceeded the expectations that were required by
18 the statute and by POST, unless you have any questions
19 first?

20 CHAIRPERSON PORINI: Mr. Olson?

21 MR. OLSON: Randy Olson. When POST came up with
22 Penal Code 13519.7, they provided a two-hour telecourse, and
23 we've worked in conjunction with POST and developed a
24 four-hour program for recruits. What we did in the sexual
25 harassment arena is: We started training -- especially in

1 such a critical area as sexual harassment and eliminating
2 discrimination, we started at the top with an eight-hour
3 program for all of our captains and above, then we also
4 provided a six-hour block for our supervisors, sergeants,
5 lieutenants, and civilian supervisors because of the
6 responsibility that's placed upon us, not only by POST but
7 also the Department of Fair Employment and Housing and the
8 EEOC.

9 And one of the things that we felt very strongly
10 about, from an organizational perspective, as the captain
11 referred to, as soon as the employee -- once a recruit starts
12 in our academy, we are definitely responsible for them to
13 eliminate discrimination and sexual harassment. So we felt
14 that, regardless of what type of training they might have had
15 coming through the academy, that we had an absolute
16 responsibility to teach them what to -- not only what the
17 department policy is but what the State Legislature's intent
18 was, as far as knowing what sexual harassment is, knowing,
19 also, that when they feel they've been confronted or exposed
20 to sexual harassment that there's procedures that they
21 follow.

22 So, from an organizational perspective, we
23 definitely felt that, as soon as a new employee comes to our
24 department, we have to definitely teach them state law,
25 federal law relating to discrimination, including sexual

1 harassment, and that we have a zero tolerance for that in the
2 workplace and that it has to start on one of the first days
3 in the academy. And then for our in-service, also, we felt
4 that, certainly, every in service officer needs to
5 continually be reminded that there is zero tolerance
6 regarding sexual harassment.

7 And so the four-hour training, we felt, enhanced
8 what POST had provided in the telecourse, and we worked in
9 conjunction with them and felt that four hours was important
10 for everybody.

11 CHAIRPERSON PORINI: All right. Mr. Miller?

12 MR. MILLER: Thank you. The Department of Finance
13 believes that, first of all, the mandate here has to do with
14 the -- the potential mandate here does not impose additional
15 training only that the content and the training in the
16 statute would affect not only the -- only the content of the
17 training rather than the requirement for additional training.

18 Secondly, while we certainly don't take issue with
19 the fact that the counties choose to provide training
20 themselves, we believe that, the way the law reads, it
21 imposes that requirement on the individual officers to
22 acquire that training, so we don't believe there's a legal
23 requirement that they provide that training.

24 CHAIRPERSON PORINI: All right. Mr. Snow, do you
25 have anything to add?

1 MR. SNOW: Yes. Regarding this training, we have
2 set as a minimum, and POST does set minimum training
3 standards for California peace officers, we have set a
4 four-hour minimum content in the basic course with specified
5 curriculum and two hours for supplementary training for
6 officers who did not go through the basic course when this
7 was incorporated, so it's a two-and a four-hour requirement.

8 And, of course, those who attend basic academy
9 throughout the state, we have roughly 6,000 graduates a year,
10 2,000 of them are non-employed, non-affiliated students,
11 4,000 are employed students, employed by law enforcement
12 agencies such as the sheriff's department.

13 CHAIRPERSON PORINI: Questions from members?

14 Mr. Beltrami?

15 MR. BELTRAMI: Mr. Snow, the 2,000 unemployed folks,
16 students, pay for their own training; is that --

17 MR. SNOW: Yes, they do; however, that's
18 supplemented by community college funding. Community
19 colleges pay -- or receive F.T.E.S. funding from the state
20 and then fees, student fees, are paid by students, in
21 addition to that.

22 MR. BELTRAMI: And, the 4,000 students, their costs
23 are paid for by the department?

24 MR. SNOW: Some of the students that are employed,
25 who attend agency-affiliated academies, those academies, many

1 of them, are affiliated with community colleges and also
2 receive F.T.E.S. money. But, in case of employed students or
3 affiliated students, they do not pay fees individually.

4 CHAIRPERSON PORINI: Mr. Beltrami?

5 MR. BELTRAMI: Camille, what's the difference
6 between this case and the last case? I mean, I think
7 everyone agrees that there's a new requirement that's
8 imposed, which is the training.

9 In one case we're saying well, it's really up to the
10 student to do it, and there's no direct cost; and, here,
11 we're saying that it's --

12 MS. SHELTON: Well, this test claim is divided into
13 three parts. The second part of this test claim, in my mind,
14 as it was presented to us, was identical to Item No. 3.
15 Okay? So the same analysis was presented on the second part,
16 but, the first part and the third part are new and completely
17 different than Item 3.

18 The first part deals with the complaint guidelines
19 that are required, you know, developed by local agencies, and
20 the staff found that that was a new program and a
21 reimbursable state mandated program. The last part deals
22 with continuing education and -- for sexual harassment
23 imposed on veteran officers; and, in that respect, we gave
24 the Commission two options. And staff found that that did
25 constitute a reimbursable state mandated program and did file

1 limits based on POST's telecourse that it was -- that local
2 agencies should be reimbursed for the peace officer time to
3 attend the training for the one two-hour course, and then the
4 training costs, you know, for the trainer and materials. So
5 that's what we recommended on the continuing education
6 portion.

7 CHAIRPERSON PORINI: So, then, for clarification,
8 Mr. Miller, is the Department of Finance saying that there's
9 no new mandate created in the first part of the claim or are
10 you saying that there -- we should not pay for the training
11 costs?

12 MR. MILLER: I think, as we did in the previous
13 case, we were taking issue with the notion that there's a
14 mandate in conjunction with basic training. We had
15 originally raised some questions, I believe, with respect to
16 the Los Angeles case on the guidelines; however, I don't
17 think we will take issue, at this point, with the staff's
18 recommendation, with respect to the guideline issue.

19 CHAIRPERSON PORINI: Other questions?

20 Ms. Steinmeier?

21 MS. STEINMEIER: Yeah, I have one for Mr. Kaye.

22 Earlier, Mr. Kaye, you mentioned that California
23 schemed for basic training for police officers.

24 MR. KAYE: Yeah.

25 MS. STEINMEIER: I'm still hung up on the threshold

1 question. Once I get this answered, I'll know the answer to
2 the whole thing.

3 MR. KAYE: Okay.

4 MS. STEINMEIER: Can you specifically cite any state
5 law which requires the local agency to be responsible for
6 basic training?

7 MR. KAYE: The answer is no, but I can only say, and
8 I would hopefully suggest that the -- Mr. Snow from POST
9 might indicate that or give some further elaboration on the
10 fact, that when the Legislature says that basically you
11 should have a new basic training component or course, or what
12 have you, that the very strong implication, to me, is that
13 basic training academies provide that. The basic training
14 academies in California are primarily counties, cities, and
15 community colleges.

16 CHAIRPERSON PORINI: Mr. Snow?

17 MR. SNOW: I'd like to elaborate just a little bit
18 on that. We certify about 39 academies around the state, and
19 they are certified voluntarily; that is, no agency or
20 community college or other organization is required to be
21 certified. For those who are certified, they, of course,
22 incur substantial costs in operating those academies, most of
23 which are not reimbursable by POST. Some of them are
24 subvented by community college funding, but, in every case,
25 it is -- it's an option on the part of the entity, whether

1 it's an agency or a community college, to be certified as a
2 basic training institution.

3 CHAIRPERSON PORINI: All right. Other questions?
4 Ms. Steinmeier?

5 MS. STEINMEIER: Move staff's recommendation.

6 CHAIRPERSON PORINI: All right. Should the staff --
7 do you want them divided or are you ready to adopt the
8 staff's recommendation?

9 Mr. Beltrami?

10 MR. BELTRAMI: Well --

11 CHAIRPERSON PORINI: Do we have a second to the
12 motion?

13 MR. LAZAR: Second.

14 CHAIRPERSON PORINI: Okay. We have a motion and a
15 second.

16 MR. BELTRAMI: And, Joann, your answer is that the
17 basic mandate is on the young person coming in who wants to
18 be a peace officer.

19 MS. STEINMEIER: Yeah. It appears that it really is
20 a benefit that the agency is willing to provide the training,
21 that's how I see it, because Mr. Kaye was unable to cite any
22 specific reference in state law that says that it is the
23 responsibility of the agency, and that was the answer to my
24 question. And, once I answered that, then everything fell
25 into place.

1 Now, on a veteran officer, in-service training
2 clearly is an additional --

3 MR. BELTRAMI: Right. Right. So we're saying that
4 L.A. shouldn't provide basic training?

5 MS. STEINMEIER: Well, or they need to charge their
6 recruits. But, you know, if you're having problems
7 recruiting, then you've got to do what you've got to do, but
8 I don't know any school district that's going to pay for
9 somebody's teaching credential. I mean, they aren't going to
10 do that.

11 They will do in-service; they will, you know,
12 provide those things that they feel basic training did not --
13 to fill in the gaps. We do that all the time. But, in an
14 awful lot of occupations, you're required -- the individual's
15 required to do the basic -- the initial training. And it's
16 wonderful that the agencies are doing that. I'm sure part of
17 it is a recruiting tool. You need to -- and you also want to
18 control, you know, your initial training. That's fine.
19 That's a part of doing business.

20 It's unfortunate. I mean, obviously, the typical
21 case is that these agencies are providing, by and large.

22 MR. BELTRAMI: So they are incurring costs?

23 MS. STEINMEIER: Right, they're incurring costs
24 but --

25 MR. BELTRAMI: Because it's a new requirement.

1 MS. STEINMEIER: Correct. Well, the new
2 requirement, though, is a different thing. I'm talking about
3 the fundamental threshold question. And, once that was
4 answered to me, then it all falls into place for me.

5 CHAIRPERSON PORINI: Camille, would you like to go
6 through the three pieces of the staff's recommendation for
7 us?

8 MS. SHELTON: Sure. I'll just divide those into the
9 three subdivisions. Subdivision (a) deals with the
10 requirement that local agencies have to prepare a complaint
11 guideline; and staff recommends approval of that.

12 Subdivision (b) is that the basic training course
13 now include instruction on sexual harassment in the
14 workplace, and, as it was stated by Member Steinmeier, we
15 recommend a denial of that portion, that it's not mandated on
16 the local agency.

17 Subdivision (c) is a requirement that all veteran
18 officers receive supplemental sexual harassment training by
19 January 1st, 1997; and staff recommends approval of that for
20 the costs for a peace officer to attend the one-time two-hour
21 course and their trainer time and their materials, and the
22 instructors to provide that course.

23 CHAIRPERSON PORINI: All right. We have a motion
24 and a second.

25 Any further discussion?

1 MR. BURDICK: Madam Chair?

2 CHAIRPERSON PORINI: A little late in the game,

3 Mr. Burdick.

4 MR. BURDICK: You raised an issue on the motion.

5 Could it be possible to address it, on behalf of

6 the -- because I think it's different between larger and

7 smaller counties; that's the issue.

8 CHAIRPERSON PORINI: All right. I'll allow it.

9 MR. BURDICK: And I also apologize; I was not sworn.

10 CHAIRPERSON PORINI: Perhaps we should do that first.

11 MS. HIGASHI: We won't make you stand.

12 Do you solemnly swear or affirm that the testimony

13 which you're about to give is true and correct based upon

14 your personal knowledge, information, or beliefs?

15 MR. BURDICK: I do. Thank you very much, and I

16 really appreciate your indulgence.

17 Alan Burdick on behalf of the California State

18 Association of Counties.

19 And I think there's just two things: The first

20 thing is on the motion. And I think in order to be

21 consistent with your first motion, it would seem to me that,

22 as I think Camille had indicated and others, that the

23 recommendation she has on the second part is exactly the same

24 as the part you just put over for the next meeting; and it

25 seems to me that you should remove this and say, let's hear

1 that argument. We can decide this at the P and G stage.

2 So my suggestion would be -- is that the motion
3 should be -- is to look at the parts that you can deal with,
4 put the other part over as a P and G issue for you to decide
5 and you can decide it consistently with however you decide
6 cultural diversity.

7 I think the other issue that is not discussed in
8 this is the difference between Los Angeles County and the
9 large agencies, those 29 agencies, probably, that are out
10 there are large agencies which are probably so large that
11 they have to have an academy in order to be able to attract
12 and train enough people. It's kind of like the California
13 Highway Patrol and the correctional department. They
14 probably could also allow them to get junior college people
15 and bring them in for part of this training, but it's not
16 practical to do. It's not a reasonable alternative. They
17 need their own large academy.

18 If you're a small agency, if you're looking at small
19 rural law enforcement agencies, this may be -- their
20 alternative would be -- is to allow their people to attend
21 community college to get that training or bring people out of
22 there.

23 And so, I think, one of the things that we have not
24 discussed as part of this that really needs part of -- that
25 will fall in as part of the discussion on the cultural

1 diversity training issue that is coming back to you, is the
2 difference between what do you have in the alternative and
3 the difference between a really large agency that has to have
4 an academy and those smaller agencies and what their
5 alternative is. Because a smaller agency, as I say, they may
6 not -- they cannot justify -- I mean, they -- an academy,
7 they don't need an academy because they may be able to send
8 their people to community colleges, and we haven't addressed
9 that issue.

10 As was mentioned by POST, as many times as you send
11 these people, you have to send them on their time during
12 their shift. They have to be paid for it. So that's a cost
13 incurred by a local agency.

14 So the only thing, that it would seem to me, is
15 that the group has kind of focused a lot on Los Angeles and
16 this academy, because it's large agency, and has not thought
17 about the impact on the smaller agencies; and then, secondly,
18 that if you -- since you have already decided to re-analyze
19 and look at the other aspects of training as it relates to
20 cultural diversity, that it would be much more consistent to
21 put that issue, as it relates to sexual harassment training,
22 over as a P and G issue to be decided; then, however you
23 decide sexual harassment training, then you can deal with it
24 consistently in the cultural diversity training P's and G's.

25 This kind of gets back to the threshold issue, the

1 P's and G's, things that we've been talking about. I know
2 that it complicates things, but I do think, in this
3 particular case, and POST can probably comment that there is
4 probably a substantial difference between Los Angeles County
5 and Modoc County and their alternatives and what kind of
6 training they have to provide.

7 CHAIRPERSON PORINI: Camille, do you have a
8 comment?

9 MS. SHELTON: Well, a couple of things. I don't
10 think it can be a P's and G's issue because it's a basic
11 threshold test claim issue, number one.

12 No. 2, based on the testimony of Mr. Snow on this
13 item, I would not change my recommendation on subdivision (b)
14 because there are no state statutes or regulations requiring
15 local agencies to put this on. Now, granted, Mr. Snow
16 testified that local agencies and community colleges, both of
17 which are defined as a local agency or school district,
18 subject to article XIII B, do provide this training.
19 Community colleges get their fees from students which pay for
20 the trainer time, so, in that respect, there would be no
21 reimbursable cost.

22 So, again, I would not change the recommendation on
23 subdivision (b).

24 CHAIRPERSON PORINI: All right.

25 Any questions?

1 (No response.)

2 CHAIRPERSON PORINI: We have a motion and a second.

3 May we have role call.

4 MS. HIGASHI: Ms. Aronberg?

5 MS. ARONBERG: Yes.

6 MS. HIGASHI: Mr. Beltrami?

7 MR. BELTRAMI: No.

8 MS. HIGASHI: Ms. Halsey?

9 MS. HALSEY: Aye.

10 MS. HIGASHI: Mr. Lazar?

11 MR. LAZAR: Aye.

12 MS. HIGASHI: Mr. Sherwood?

13 MR. SHERWOOD: Aye.

14 MS. HIGASHI: Ms. Steinmeier?

15 MS. STEINMEIER: Aye.

16 MS. HIGASHI: Ms. Porini?

17 CHAIRPERSON PORINI: Aye.

18 MS. HIGASHI: Motion carries.

19 CHAIRPERSON PORINI: Thank you.

20 MS. HIGASHI: This brings us to Item 5, which is

21 another test claim. This item will be presented by David

22 Scribner.

23 MR. SCRIBNER: Good morning.

24 "Before the enactment of the test claim legislation,

25 persons convicted of child abuse were eligible for probation

1 rather than incarceration. Under certain circumstances,
2 defendants were required to participate in supervised
3 counseling as a condition of probation unless the court found
4 counseling inappropriate for the defendant.

5 "The test claim legislation amended the Penal Code;
6 to impose mandatory minimum probation periods of 48 months,
7 for violation of section 273(a), and 36 months, for violation
8 of 273(d), in those cases where probation is granted; to
9 require successful completion of at least one year of a child
10 abuser's treatment counseling program, approved by the county
11 probation department; and to require a criminal court
12 protective order for the victim. In addition, these sections
13 provide that if the offense was committed while the defendant
14 was under the influence of drugs or alcohol, the defendant
15 shall abstain from such use and shall be subject to random
16 drug testing by their probation officer. The test claim
17 legislation also added section 273.1 to the Penal Code, which
18 outlines the criteria to be met by child abuser's treatment
19 counseling programs.

20 "Staff finds that Government Code Section 17556,
21 subdivision (g), applies to activities relating to the
22 capture, detention, prosecution, sentencing, including
23 probation and parole, of a defendant. Thus, staff finds that
24 a defendant's probation and the completion of a child
25 abuser's treatment counseling program, as a condition of

1 probation, is a penalty assessed against the defendant for
2 the conviction of child abuse and is subject to Government
3 Code Section 17556, subdivision (g); however, staff finds
4 that only those activities directly related to this penalty
5 are subject to the exclusion in Government Code Section
6 17556, subdivision (g).

7 "Staff recommends that the Commission find that the
8 test claim legislation imposed reimbursable state mandated
9 costs for the following activities:

10 "Development, implementation of child abuser's
11 treatment counseling program, vendor approval programs;

12 Inspection/approval of child abuser's treatment
13 counseling programs; and

14 "Receipt, care, and review of defendants' progress
15 reports.

16 "Therefore, staff recommends that the Commission
17 approve the child abuse treatment services authorization and
18 case management test claim," as outlined in the staff
19 analysis.

20 Please state your name for the record.

21 MR. KAYE: Leonard Kaye, County of Los Angeles.

22 MR. WRIGHT: Jim Wright, L.A. County Probation.

23 MR. MILLER: Jim Miller, Department of Finance.

24 MS. STEWART: Cheryl Stewart, Department of Finance.

25 CHAIRPERSON PORINI: All right.

1 Mr. Kaye, why don't you begin.

2 MR. KAYE: Good morning, again. We basically concur
3 with the staff recommendation, so I will be unusually brief.
4 I'd just like to summarize the three areas. Staff is
5 recommending that local government be reimbursed for
6 developing and implementing child abuser treatment counseling
7 program vendor approval programs for inspecting and approving
8 of child abuser's treatment counseling programs and receiving
9 and caring for and reviewing defendants' progress reports.

10 And we're very fortunate to have Mr. Jim Wright with
11 us today who will be, along with myself, pleased to answer
12 any questions.

13 CHAIRPERSON PORINI: All right.

14 Mr. Wright, did you wish to make a statement?

15 MR. WRIGHT: Um, Jim Wright. It's been a very large
16 pleasure working with Mr. Kaye, and I also enjoyed the staff
17 analysis. I thought it was well thought out, and we support
18 that analysis, and I would submit it based on that.

19 I would just like to add that I believe we're making
20 improvements in child abuser treatment programs, and that
21 this legislation is helping moving an unregulated field into
22 a regulated area, and it's well worth the expenditure of our
23 taxpayer money.

24 CHAIRPERSON PORINI: All right. Department of
25 Finance.

1 MS. STEWART: Cheryl Stewart, Department of
2 Finance.

3 When we reviewed the draft staff analysis of this
4 mandate, of this test claim, there were two recommendations
5 by the staff, and those were that there were two specific
6 activities that were mandates, state reimbursable mandates,
7 and we concurred with those two. Those are the first items
8 that staff mentioned, which is the development and
9 implementation of treatment counseling program vendor
10 approval programs and the inspection and approval of those
11 programs.

12 The final analysis added another component to their
13 recommendation, and that is the receipt, care, and review of
14 defendants' progress reports. The law, as we see it, doesn't
15 specifically require that activity by probation officers, and
16 there's no specific statement in the law that says what
17 probation officers should do. There's a requirement on the
18 treatment programs, that a report be submitted to the courts
19 and to the probation offices, but there's no additional
20 requirement on the probation officers to do anything with
21 that report.

22 Obviously, to the extent that they do something with
23 that report, we believe it would be in conjunction with their
24 responsibilities in enforcing their terms and conditions of
25 probation and that they would be, essentially, using that

1 information in their duties to enforce the penalty for the
2 crime, which is the probation requirements.

3 In our judgment, this is not a state reimbursable
4 mandate, and we would make that recommendation to you.

5 CHAIRPERSON PORINI: For clarification, this receipt
6 issue is not a mandate, but you don't disagree with the other
7 two items?

8 MS. STEWART: Right. That's correct.

9 CHAIRPERSON PORINI: All right.

10 Questions from members?

11 MR. SHERWOOD: I would just like the staff to
12 comment on that last issue.

13 CHAIRPERSON PORINI: Mr. Scribner?

14 MR. SCRIBNER: Sure. First, the 273.1,
15 subdivision (d), it requires, likewise, the treatment program
16 to provide these reports; however, they have to go somewhere,
17 and someone has to do something with them. So, from our
18 point of view, it would be the probation department that
19 would be handling and doing the care and receipt of these
20 reports.

21 As far as the second issue that -- it seems to go to
22 the penalty that was assessed against the defendant. 273.1
23 is drafted in such a way that these reports are one of the
24 things, in staff's view, that the county probation
25 departments would use, as an inspection tool, to ensure that

1 these abuser treatment programs are actually operating under
2 the requirements in the Penal Code. So the reports kind of
3 do a dual duty kind of activity there, but the staff found
4 that that should not limit reimbursement for that activity,
5 because -- and Mr. Wright can further go into that, but I
6 believe that, based on the language of the Penal Code, that
7 the county probation departments would use that as a tool to
8 make sure that there is compliance with the law.

9 CHAIRPERSON PORINI: Mr. Miller?

10 MR. MILLER: Thank you, Madam Chair.

11 We would just note, in response, that while it may
12 well be that county probation departments will use the
13 information they get from monitoring the defendants who
14 enlist in the program, that that, in our view, is an
15 incidental use of the information; the primary goal, here,
16 has to be to protect the public from those convicted of very
17 serious crimes.

18 We believe that monitoring their progress through
19 this treatment program is an integral part of doing that and
20 we feel that it's very much part of the crimes and
21 infractions responsibility that are imposed on the county.

22 CHAIRPERSON PORINI: May I ask a question?

23 In the earlier discussion, Ms. Stewart, you stated
24 that the courts request the report or --

25 MS. STEWART: The law requires that the treatment

1 programs provide a copy of the reports, periodically, to the
2 courts and the probation offices; that's the only requirement
3 in the law.

4 CHAIRPERSON PORINI: Thank you.

5 MR. BELTRAMI: Madam Chair, are you ready for a
6 motion?

7 CHAIRPERSON PORINI: Certainly, Mr. Beltrami.

8 MR. BELTRAMI: I would move the staff
9 recommendation.

10 MR. SHERWOOD: I would second it.

11 CHAIRPERSON PORINI: All right. We have a motion
12 and a second.

13 Is there any discussion or questions?

14 (No response.)

15 CHAIRPERSON PORINI: Role call, please.

16 MS. HIGASHI: Mr. Beltrami?

17 MR. BELTRAMI: Yes.

18 MS. HIGASHI: Ms. Halsey?

19 MS. HALSEY: Aye.

20 MS. HIGASHI: Mr. Lazar?

21 MR. LAZAR: Aye.

22 MS. HIGASHI: Mr. Sherwood?

23 MR. SHERWOOD: Aye.

24 MS. HIGASHI: Ms. Steinmeier?

25 MS. STEINMEIER: Aye.

1 MS. HIGASHI: Ms. Aronberg?

2 MS. ARONBERG: Yes.

3 MS. HIGASHI: Ms. Porini?

4 CHAIRPERSON PORINI: No.

5 MS. HIGASHI: Motion carries.

6 CHAIRPERSON PORINI: Thank you. Okay.

7 MS. HIGASHI: We now get to shift gears. We're now

8 up to Item 6, and this is an ancient test claim.

9 This item will be presented by Sean Avalos of our

10 staff.

11 CHAIRPERSON PORINI: All right. Staff?

12 MR. AVALOS: Good morning.

13 "School districts are required under prior law to

14 provide a minimum number of physical education instruction

15 hours to pupils. The claimants, Sweetwater Union High School

16 District and Bakersfield City Elementary School District,

17 allege that the subject test claim legislation adds a new

18 reporting and compliance requirement for the Superintendent

19 of Public Instruction to determine whether districts are

20 actually providing their students with the statutory minimum

21 hours of physical education.

22 "Furthermore, in response to comments by the

23 Department of Finance that the test claim is premature,

24 claimants state that the test claim process does not require

25 an impact, only that there is or will be an impact, and

1 anticipate that the statute will be implemented as part of
2 the Coordinated Compliance Review.

3 "In their response to the draft staff analysis,
4 Department of Finance asserts that under the gender equity
5 review portion of the existing Coordinated Compliance Review,
6 school districts are already required to develop compliance
7 documentation that would enable them to meet the requirements
8 of the test claim legislation.

9 "The California Department of Education has not
10 submitted a response to the test claim, however the bill
11 analysis contains commentary that California Department of
12 Education 'Supports the bill and will be able to add this
13 review requirement to the existing Coordinated Compliance
14 Review.'

15 "Staff concludes that the test claim legislation
16 imposes a reimbursable state mandated program for activities
17 necessary for reporting on compliance with physical education
18 requirements. Accordingly, staff recommends that the
19 Commission approve this test claim for the new activities as
20 listed in the conclusion on page 8 of the staff analysis.

21 "Although staff recommends approval of the test
22 claim at this time, the actual reimbursement period for any
23 of the above activities, including training and developing
24 additional recordkeeping procedures, should begin no earlier
25 than the date that the school district receives documentation

1 from the California Department of Education that their
2 district is specifically selected to participate in physical
3 education compliance reporting."

4 Will the parties and representatives please state
5 your names for the record?

6 MR. HENDEE: Lawrence Hendee, Sweetwater Union High
7 School District, co-claimant.

8 MR. STAPLEY: Wayne Stapley, Bakersfield City School
9 District, co-claimant.

10 MR. BELL: Jeff Bell, Department of Finance.

11 MS. TAYLOR: Barbara Taylor, Department of Finance.

12 CHAIRPERSON PORINI: All right. Claimants, would
13 you like to begin?

14 MR. HENDEE: Lawrence Hendee.

15 I'm here just to stipulate my support for staff's
16 analysis.

17 MR. STAPLEY: Wayne Stapley.

18 I like to agree with the conclusion and the
19 recommendation of staff.

20 CHAIRPERSON PORINI: All right. Department of
21 Finance?

22 MR. BELL: Yes. Hi.

23 We have three basic points in our initial
24 presentation. First, we do not concur with the staff
25 analysis or the claimants in that the new legislation

1 requires them to submit a report to the Department of
2 Education, and, in fact, the bill actually stated that they
3 shall report to the Superintendent of Public Instruction in
4 the Coordinated Compliance Review," so preparing a report was
5 not in the statute; it's been interpreted into the statute,
6 and, thus, we do not concur with that as a requirement.

7 The other portion of the statute, however, also
8 states that they will do this reporting in the Coordinated
9 Compliance Review, and I've handed out to each of you a copy
10 of what is in the existing Coordinated Compliance Review from
11 the Department of Education. This is their gender equity
12 portion.

13 And if you'll note, on the second page, Roman
14 Numeral III, (g)(8) requires that they look at -- in their
15 review, that the department look at all the students in
16 elementary schools, grades one through eight, participate in
17 physical education programs for a total of not less than two
18 hundred minutes within each ten school days; it also lists
19 the high school requirements.

20 And then, at the bottom there, you'll note in that
21 block that it cites the Education Code references, which are
22 51222 and 51113, looks like there's a typo there. This
23 reference document also states how the coordinated compliance
24 reviewer is to determine to what extent the school district
25 is complying with the existing law.

1 And it notes, if you'll note in the second section
2 there, that they're to review the lesson plans for each
3 teacher which document total minutes and exclude recess and
4 lunch periods.

5 And then, finally, over on the third section there,
6 it shows how districts can achieve compliance with these
7 requirements that are in existing law.

8 Given that this gender equity review already happens
9 to cover the same code sections that this -- that the bill
10 that is in contention covers, we believe that the existing
11 process would already take care of the requirements that are
12 listed in this mandate test claim. And we also note that,
13 perhaps, the only change that would have to occur was that
14 the Department of Education could change this review guide to
15 say "Physical education and gender equity review," and then,
16 in doing so, they would cover both bases by just changing the
17 title of their existing document.

18 And then the final third point we have is that the
19 claimants had indicated that there would be a cost associated
20 with the preparing of the corrective action plan, and the
21 existing CCR process requires a district to, if they're found
22 out of compliance, come into compliance within 45 days; and
23 if not, then to submit a request for an extension of six
24 months.

25 This legislation would actually allow a district to

1 be out of compliance, and I'm reading on 51223.1(d) that they
2 would be able to issue a corrective action plan within one
3 year of this being found out of compliance. So this
4 legislation is actually more lenient than the existing CCR
5 process.

6 So those are our three main points in this test
7 claim.

8 CHAIRPERSON PORINI: All right.

9 Questions from members?

10 MR. BELTRAMI: Does staff have any comments on this
11 one?

12 MR. AVALOS: I guess our only concern would be that
13 while -- that if we were to assume that all the requirements
14 are being covered under the gender equity, under the gender
15 equity CCR, the concern would still be that CDE says, in the
16 development, that it stands prepared to add physical
17 education reporting as an additional report to the CCR.

18 So our concern would be that, say, in the next --
19 instead of SPI -- or the next SPI would say, well, I want to
20 add -- I want to add a different -- an additional reporting
21 requirement to the CCR, then they would add this form. And,
22 too, the CCR would say physical education reporting, and then
23 the school districts would be responsible, at that time, to
24 actually fill out another form to the CCR, and we're not
25 saying reimbursement, now, for what the activities are

1 involved with the gender equity portion. If no action is
2 taken by the SPI, there would be no reimbursement; but, if
3 the SPI or the CDE requires additional reporting, then
4 there's no -- or the CCR, then, at that time, we would say
5 that the mandate is reimbursable.

6 CHAIRPERSON PORINI: All right.

7 Questions from members?

8 MS. JORGENSEN: And I would like to point out that
9 while there may be a requirement for the gender equity, this
10 section provides the test claim legislation -- 51223.1(a),
11 subdivision (b)(1), states that "each school district
12 selected by the Superintendent of Public Instruction pursuant
13 to paragraph two shall report to the Superintendent of Public
14 Instruction and the Coordinated Compliance Review as to the
15 extent that it's in compliance"; so, here, they're asking for
16 more. They're not just saying fill that out with the
17 record. They can come forward and ask any questions that
18 they want, so, then, it may not be there.

19 Subdivision 2 also provides, "the Superintendent of
20 Public Instruction shall select not less than ten percent of
21 the school districts so the state can report compliance. The
22 school districts selected shall provide a random and accurate
23 sampling of the state as a whole, and, for purposes of
24 determining compliance with these provisions, the
25 Superintendent of Public Instruction shall not count the time

1 spent in recesses and lunch activity."

2 What I'm trying to point out is that this is
3 something above and beyond what the CCR is. And, after they
4 get their CCR, they can't say, well, wait a minute, we're
5 ready, now, to look at this and we want you to comply with
6 this. So, while some of the basic information may be covered
7 under current law, this is something additional that the
8 Superintendent of Public Instruction can request.

9 CHAIRPERSON PORINI: So may I ask: Are you then
10 arguing that there would be an offset, since you're saying
11 that some basic information is covered?

12 MS. JORGENSEN: No. I'm saying -- I'm saying
13 there's two things. First of all, they have to be in the
14 CCR; they have to comply with this. But, here, further
15 instructions may come down to ask them -- well, we're not
16 quite sure what these -- it's not clear. They have the power
17 to ask questions, that there will have to be some work --
18 there may be some additional work to respond to the
19 questions.

20 So, yes, they do file their CCR but this gives them
21 the authority to ask other questions that may not necessarily
22 be covered by that.

23 CHAIRPERSON PORINI: Mr. Bell, then Ms. Steinmeier.

24 MR. BELL: Yeah. I just want to point out on that
25 last comment. Actually, existing law, 51223, already

1 requires the exclusion of recesses and lunch periods.

2 MS. JORGENSEN: I was just pointing that out, just
3 as to what they need to do. The point I was trying to make
4 is that they can come forward and ask for additional
5 information. They can ask them to explain how they came up
6 with the CCR, but, really, what they're trying to do is
7 they're trying to focus on -- the intent of the statute is to
8 see, if I can read the intent, it most -- the certain
9 validity of things. Currently, law mandates two hundred
10 minutes, according to the March 1974 report on disease
11 control.

12 The percentage of children and adolescents who are
13 overweight has more than doubled. I mean, therefore -- it
14 goes on, "It is, therefore, the intent of the Legislature
15 that all children shall have access to high quality and
16 comprehensive and develop the appropriate physical education
17 program on a regular basis."

18 So, when I'm looking at that, what's the fair --
19 they're looking to the analysis to see what problems can be
20 done or what can make it better. So it's not necessarily
21 just compliance with the CCR.

22 CHAIRPERSON PORINI: Ms. Steinmeier?

23 MS. STEINMEIER: Mr. Bell, your questions -- it's
24 very logical that the Superintendent of Public Instruction
25 would just combine these two issues. Unfortunately, logic

1 doesn't always follow from the Superintendent of Public
2 Instruction. If they see it as a discrete law, they may
3 create it as a discrete report. And, obviously, the audit is
4 only going to be added onto -- what, about ten percent -- ten
5 percent of the school districts, and it will be done after
6 the CCR.

7 So, undoubtedly, even though some of the basic
8 information might be there, there's still -- there's more
9 staff time involved in generating, yet, another report.

10 I have a question, too, that I realize that there's
11 a time line to be followed here, and that's why we need to
12 decide if this is a mandate or not. My question is: When we
13 come to the P's and G's, we may have to suspend that until
14 the Superintendent of Public Instruction does something to
15 create actual costs. And is that going to generate any
16 problems?

17 And my question is for the staff.

18 CHAIRPERSON PORINI: Pat?

19 MS. JORGENSEN: I believe we can't do that. I mean
20 it -- it's kind of interesting here. This is what staff
21 pointed out. We were surprised that there's been no -- that
22 this hasn't been put into place. Our mandates law does
23 indicate that if you can find a mandate that there's a
24 possibility that there will be costs mandated by the state,
25 and that they will meet the threshold of \$200.

1 And, again, I think maybe there's a few areas that
2 we could look at. We could probably look at training. But,
3 again, without knowing what questions are going to be asked,
4 I think it would be difficult, so I think, yes, we would have
5 to put the P's and G's on hold.

6 MS. BERG: I have a question, also.

7 MS. STEINMEIER: Okay. Can we let Mr. Hendee
8 comment and then the school district?

9 CHAIRPERSON PORINI: Yes.

10 Mr. Hendee?

11 MS. STEINMEIER: Because my question is also to him.

12 MR. HENDEE: I'd like to point out that the
13 1999/2000 training manual is now out, which means that the
14 provision is in this, on page 167, and so it is going to be
15 part of the upcoming audit, if you will, to the CCR for the
16 school districts for 2000 and 2001, so that is already out.

17 MS. STEINMEIER: So we know what will happen, but we
18 don't have all the details about what might be included yet?

19 MR. HENDEE: No. I don't know the details about
20 what they're going to ask, and so forth, but the requirement
21 for the test is there.

22 MS. STEINMEIER: So you anticipate something is
23 coming?

24 MR. HENDEE: Right.

25 CHAIRPERSON PORINI: Mr. Bell.

1 MR. BELL: I just want to reemphasize the point
2 that, despite the concerns that I've heard thus far, the
3 statute does not require the preparation of a report. It
4 requires them to report; it shall report versus shall prepare
5 a report. So "report" can be a variety of things and it
6 doesn't necessarily mean they have to -- if they already have
7 these existing documents, as listed here in the current plan
8 where they're reviewing the lesson plans for teachers and
9 showing the total minutes already provided in physical
10 education, it seems like a jump to say they're now --
11 although we're already checking this in the equity review,
12 we're going to have to create a report to show that.

13 I don't think that the statute defends that.

14 CHAIRPERSON PORINI: All right. Ms. Halsey?

15 MS. HALSEY: This is for the staff. Would your
16 conclusions or recommendations -- would you consider amending
17 them to offset for any report or document that would already
18 be prepared, such as gender equity, so that in the event
19 they're required to report and use this or in preparing
20 information that this constitutes an offset from the actual
21 costs?

22 MS. JORGENSEN: If I can respond to that, usually in
23 our parameters and guidelines, we do provide that there shall
24 be offsets -- there should be offset costs for something that
25 ought to be prepared. And I guess the way that staff

1 envisioned this is this would be -- there would be the time,
2 probably, having to go through to review the report that
3 they've already prepared, the time spent on actually the cost
4 to respond to the questions of the -- that the Superintendent
5 of Public Instruction might reach, and so I agree with you
6 that the report would be there, but, possibly, something
7 could be put in there to indicate, if you adopt it, say, to
8 the extent these costs are not probably covered under any
9 other mandate in complying with the CCR, that probably can be
10 done.

11 CHAIRPERSON PORINI: Mr. Hendee or Mr. Stapley,
12 maybe you can -- it dawned on me everyone here has not gone
13 through a Coordinated Compliance Review.

14 Do you prepare a variety of reports or does the
15 Department of Education send in a team of people who sit down
16 for some days on end, as I understand it, and review lesson
17 plans, that sort of thing?

18 MR. HENDEE: Well, there is a team that comes in to
19 each district, and each district receives this the year prior
20 to when they're going to have the audit so they know what the
21 team is going to be looking for, and they prepare their
22 records and get them ready to respond to that, and that's,
23 precisely, what we're talking about on this particular
24 Education Code is that there will be additional preparation
25 time to get the materials ready for that team to come in and

1 review.

2 CHAIRPERSON PORINI: Mr. Beltrami?

3 MR. BELTRAMI: Does the team review this gender
4 report? Is that part of this review?

5 MR. HENDEE: Yes.

6 MR. BELTRAMI: Okay. I'm a little concerned, Pat,
7 in your comment, that the Superintendent can ask -- from this
8 review, can ask additional questions, I guess.

9 MS. JORGENSEN: That's the way that we understand it.

10 MR. BELTRAMI: Well, I mean, isn't that true of any
11 audit? People are going to ask questions.

12 MS. JORGENSEN: Well, that is true. That is true.
13 I guess the thing that's unusual here is that not every
14 school district will know this is going to happen, so this is
15 going to be a random -- the way I understand this, it's going
16 to be a random picking of the school district. I mean, isn't
17 it in addition to -- the audit in addition to the CCR?

18 MR. HENDEE: Well, I can't -- I can't stipulate that
19 every district won't know, because I don't know how the
20 State Department selects the districts. They select every
21 four years. You get a review and I don't know whether it's
22 the same districts every four years or whether they mix them
23 up. I don't know that.

24 But the bottom line on this is that -- what a
25 district has to do in order to defend itself relative to why

1 a student is not receiving two hundred minutes of instruction
2 is to evaluate why they aren't, and that's something that's
3 new. We'll have to report that to the state, or the
4 superintendent, and so these are all the additional steps
5 that a district has to go through in order to -- in order to
6 pass their compliance review.

7 CHAIRPERSON PORINI: Mr. Bell.

8 MR. BELL: And, just to respond to Mr. Hendee's
9 statement there, under the gender equity program, they would
10 already have to respond to why the students were not in
11 compliance and their physical education wasn't -- so this is
12 the existing CCR; they would already have to make that
13 response.

14 MR. HENDEE: I would disagree with that from the
15 standpoint of the 1995/96 training manual on page 205, excuse
16 me while I fumble around here. I'm sorry, 207.

17 The only thing in the gender equity review portion
18 of the CCR is the provision to test -- the compliance item
19 test is to establish that physical education classes are
20 quote/unquote "for education." It's the only thing that
21 refers to physical education. So that's the only requirement
22 that existed in 1995/96.

23 And I don't see -- I don't see anything on this that
24 tells me where this came from. What year is this from?

25 MR. BELL: It's in the lower left-hand side. It's

1 the --

2 MR. HENDEE: What does that say?

3 MR. BELL: It says, "Coordinated Compliance Review
4 Guide -- Training Guide, 2001/2002."

5 MR. HENDEE: That would be reflective of this item
6 right here, which is brand new. This -- to tell you exactly
7 what this says, on page 167, it's labelled as "New," it
8 references Education Code 51223.1, and it says, specifically,
9 that "the compliance item test is to determine that all
10 students in grade one through eight participate in physical
11 education programs for a total of not less than two hundred
12 minutes within each ten school days."

13 MR. BELL: Right.

14 MR. HENDEE: And that's brand new.

15 MR. BELL: What year is that one?

16 MR. HENDEE: That's 1999/2000. It's right here.

17 MS. BERG: If I may -- um, Carol Berg, Education
18 Mandated Cost Network.

19 What's very critical here is that we don't mix up
20 documents that are current for 2000/2001 with those that were
21 not created yet in 1995. You must look at what the statute
22 added, and that is reflected in the document that Mr. Bell is
23 citing. Those are current statutes, after the law.

24 CHAIRPERSON PORINI: Mr. Bell, any comment?

25 MR. BELL: Just one comment. Since -- and

1 recognizing what Ms. Berg just stated, since this hasn't been
2 implemented yet, since the physical education portion has not
3 been implemented yet, this document would seem to be
4 appropriate for the existing gender equity review plan and
5 the physical education requirements associated in it.
6 There's nothing that governed 1998 since they hadn't
7 implemented it at the Department of Education yet.

8 This is the current document, though, showing what
9 they would require in physical education for equity review.
10 So, given that --

11 CHAIRPERSON PORINI: All right. So you're saying
12 that the document that you passed out to us went to some
13 portion of schools that participated in their CCR review in
14 1998?

15 MR. BELL: No. I do not know to what extent the
16 Department of Education distributed this document. This is
17 what they gave us when we asked for it.

18 CHAIRPERSON PORINI: Mr. Sherwood?

19 MR. SHERWOOD: It would seem like, since we go back
20 to '95, like Ms. Berg indicated, and now we're talking about
21 a 2001 -- 2000/2001, that we've got two different issues
22 now: Possibly the 2001 issue may overlap and create some
23 offset, possibly, but it would seem like for '95 to 2000 we
24 don't have that situation, if we can't prove that this
25 document was in effect before 2000.

1 It seems very clear to me there. I'm assuming that
2 this is a mandate. But, even when you get the overlap, like
3 the 2000 and 2001, wouldn't you agree that they still have to
4 prepare a report? Well, no, he wouldn't agree to preparing a
5 report.

6 MS. BERG: He would not agree.

7 MR. SHERWOOD: But he would have to say that they
8 still have to be involved in a process related to this
9 current issue.

10 CHAIRPERSON PORINI: Just a moment, Mr. Cunningham.

11 MR. CUNNINGHAM: Thank you.

12 MR. SHERWOOD: And I guess it's logical to me that
13 that does lead, to me, to some type of a report, so it would
14 just seem like maybe, to me, we're looking at a mandate here
15 with a P and G offset, possibly, possibly related to 2001 and
16 on.

17 CHAIRPERSON PORINI: All right. You're joining us a
18 little late.

19 MR. CUNNINGHAM: Yes, I am. Jim Cunningham. I'm
20 with the San Diego Unified School District.

21 The statute came first and said we had to have a
22 report as part of the CCRs. This is the report in the
23 CC and Rs that the statute wants. This is the Department of
24 Education saying okay, we've looked at the statute, this is
25 what we want as part of the CC and Rs. Pursuant to that

1 statute, this is the report. It wasn't preexisting; it
2 didn't exist before the statute came in. The fact that it's
3 now -- the Department of Education said fine. We looked at
4 the statute. We figured out what we need to do to implement
5 that statute and here it is.

6 MS. BERG: That's not the report.

7 MR. CUNNINGHAM: Well, it's the CC and Rs that we're
8 talking about.

9 MS. BERG: That's right.

10 MR. CUNNINGHAM: The 2000/2001 -- yeah, this, sorry.

11 MR. BELTRAMI: Do we have that page that was pointed
12 out to us in our material?

13 MS. JORGENSEN: This is what we -- this is what was
14 passed out to you, and, if you look at the bottom here --

15 MS. BERG: It is not in your materials.

16 MS. HALSEY: What we have isn't even published. We
17 have a fax --

18 MR. BELTRAMI: That's right.

19 CHAIRPERSON PORINI: No. I think that it is.

20 MR. CUNNINGHAM: It is. It is.

21 MS. BERG: It's in the training manual that was just
22 printed.

23 CHAIRPERSON PORINI: That was just printed.

24 MS. HIGASHI: The staff analysis noted that
25 Department of Finance had made that argument, that they had

1 not given us any documentation to support their argument
2 which is why this document was given us to us today.

3 MR. BELL: Which is why I provided it.

4 MR. SHERWOOD: Madam Chair?

5 CHAIRPERSON PORINI: Mr. Sherwood?

6 MR. SHERWOOD: That report you're referring to, is
7 there an example of this report?

8 CHAIRPERSON PORINI: You held up a document,
9 Mr. Cunningham.

10 MR. SHERWOOD: You held up a document.

11 MR. CUNNINGHAM: I'm sorry. I was holding up the
12 wrong document. It's this, which is part of the training
13 guide for '99/2000, and this is where -- I think
14 Mr. Bell's --

15 MR. BELL: Ours is a different year.

16 MR. CUNNINGHAM: Theirs is 2000/2001, but this is --
17 again, where the Department of Education said fine, we looked
18 at the statute. We're going to figure out what we need to
19 add to the CCRs. Here it is.

20 MS. BERG: And here it is.

21 MR. CUNNINGHAM: So this is implementing that
22 statute.

23 MR. SHERWOOD: And it's in the current report?

24 MR. CUNNINGHAM: Yes. And it was not in existence,
25 as Mr. Hendee testified, in '95/96 when the statute when into

1 place, so there is no offset. This is the report that we are
2 doing as part of the CCRs. It's new.

3 MR. SHERWOOD: And the report that the Department of
4 Finance is referring to will be in the next publication?

5 MS. BERG: I believe that's what they have. I think
6 they have the next iteration.

7 MR. CUNNINGHAM: The next iteration of the same --
8 for those people who will be going through this review
9 process in the 2000/2001 year.

10 CHAIRPERSON PORINI: So is there anyone who has been
11 subjected to the -- in the edition that you have, have people
12 gone through that Coordinated Compliance Review?

13 MR. CUNNINGHAM: I don't know that answer. As far
14 as the P's and G's that were raised earlier, if somebody has
15 no cost, they'll file no claim, so I don't know that need to
16 have any limiting language in the P's and G's; it's just that
17 you can't file a claim unless you've had costs. So those
18 school districts who have not gone through this process will
19 not file a claim.

20 CHAIRPERSON PORINI: Mr. Bell, you had a comment?

21 MR. BELL: I was just comparing the two documents.

22 CHAIRPERSON PORINI: Okay. All right.

23 Ms. Steinmeier?

24 MS. STEINMEIER: We have two problems here: One, is
25 it a mandate? And then, obviously, the P's and G's question

1 is a very complex one, and we're not going to solve that
2 today or anytime real soon, so I'd like to move the staff
3 recommendation.

4 CHAIRPERSON PORINI: All right. We have a motion.
5 Is there a second?

6 MR. LAZAR: I'll second it.

7 CHAIRPERSON PORINI: All right. We have a motion
8 and a second.

9 Is there further discussion?

10 MS. HALSEY: I have another question.

11 CHAIRPERSON PORINI: Ms. Halsey?

12 MS. HALSEY: This gender equity, there's not another
13 statute that requires gender equity reporting separate and
14 apart from this physical education requirement?

15 MR. BELL: Actually, I believe there is. I'd have
16 to get back to you on the exact statute that is the gender
17 equity requirement. I was just noting the physical education
18 portion within it and then cited Education Code references.

19 MR. CUNNINGHAM: Yeah. I think what they did is
20 they expanded the scope of the gender equity review to
21 include the things that the statute requires.

22 MR. BELL: That's right.

23 CHAIRPERSON PORINI: So Mr. -- I'm sorry.

24 Ms. Halsey?

25 MS. HALSEY: So has that been -- has that been

1 funded, that mandate for gender equity, or is that another
2 case?

3 MS. BERG: It's not a separate statute.

4 MS. HALSEY: It's not a separate statute?

5 MS. BERG: No. No.

6 MR. CUNNINGHAM: I don't think so.

7 MS. BERG: It has been added into as new, in this
8 manual, to meet the requirements of the statute that's in
9 front of you today, and that's what we're asking you to
10 decide: Is this a mandate or is it not?

11 MS. HALSEY: Okay. And I guess my question is: Is
12 there another statute that also requires this, where this
13 gender equity --

14 MS. BERG: My answer to that is no; only here.

15 MR. BELTRAMI: But the gender section is in that --

16 MR. BELL: There is a section of the Education Code
17 that does cover gender equity and --

18 MR. BELTRAMI: Does it ask for the same thing?

19 MR. CUNNINGHAM: No.

20 MS. BERG: No, it does not.

21 CHAIRPERSON PORINI: Mr. Bell, do you have that?

22 MR. BELL: Yeah. I'm reading as fast as I can.
23 I'm reading quickly. It is not in the level of detail that
24 is listed in the code section referencing physical education.

25 CHAIRPERSON PORINI: All right. Is there --

1 Mr. Beltrami?

2 MR. BELTRAMI: So we couldn't satisfy the

3 superintendent by just writing on top here, "This is our

4 response to" --

5 MS. BERG: No, Mr. Beltrami. This is a new effort

6 and it will require new reporting, new research in

7 preparation, if you are selected.

8 CHAIRPERSON PORINI: All right. Further questions?

9 (No response.)

10 CHAIRPERSON PORINI: All right. We have a motion

11 and a second.

12 May I have role call.

13 MS. HIGASHI: Ms. Halsey?

14 MS. HALSEY: I'm sorry. Can I have clarification on

15 the motion?

16 MS. HIGASHI: Staff recommendation.

17 MS. HALSEY: Aye.

18 MS. HIGASHI: Mr. Lazar?

19 MR. LAZAR: Aye.

20 MS. HIGASHI: Mr. Sherwood?

21 MR. SHERWOOD: Aye.

22 MS. HIGASHI: Ms. Steinmeier?

23 MS. STEINMEIER: Aye.

24 MS. HIGASHI: Ms. Aronberg?

25 MS. ARONBERG: Yes.

1 MS. HIGASHI: Mr. Beltrami?

2 MR. BELTRAMI: Yes.

3 MS. HIGASHI: Ms. Porini?

4 CHAIRPERSON PORINI: Yes.

5 MS. HIGASHI: Thank you.

6 MS. BERG: Thank you.

7 MS. HIGASHI: For clarification, I'd just like to

8 make note of this that in the statute there is a requirement

9 that after a statement of decision is adopted, that the

10 claimant has a duty to file proposed parameters and

11 guidelines with the Commission. There's a penalty attached

12 if the proposed parameters and guidelines are not filed.

13 So we will -- once the statement of decision is

14 issued, we will proceed accordingly and send out those same

15 letters. What we would do at that point in time, I believe,

16 is schedule a prehearing/informal discussion and decide how

17 claimants and interested parties would wish to proceed, and

18 if they would stipulate to hold them in abeyance or to move

19 forward, and we'll deal with it when we get to that point in

20 time.

21 CHAIRPERSON PORINI: I --

22 MS. HIGASHI: There is a duty to file those

23 parameters and guidelines in a certain time line.

24 CHAIRPERSON PORINI: I would like to suggest that

25 staff contact the superintendent to find out if their yearly

1 Coordinated Compliance Review schedule -- if they are
2 actually implementing this.

3 MS. HIGASHI: We can certainly do that.

4 MR. LAZAR: Madam Chair, can we take a short break,
5 please?

6 CHAIRPERSON PORINI: Let's take a short -- let's
7 take a ten-minute break.

8 (Whereupon a break was taken.)

9 CHAIRPERSON PORINI: Okay. Shall we get started
10 again?

11 MS. HIGASHI: We're on Item 6, test claim on
12 behavioral intervention plans --

13 CHAIRPERSON PORINI: 7.

14 MS. HIGASHI: I mean Item 7. This item would be --
15 not that I want to revisit it, but this item will be
16 presented by David Scribner.

17 MR. SCRIBNER: "The Commission on State Mandates
18 first heard this test claim at its September 30, 1999
19 hearing. The Commission voted on a motion to deny the test
20 claim. The motion failed on a 3-3 vote. After this vote,
21 the Commission took no further action on this test claim.

22 "At the November 30, 1999 hearing, the Commission
23 instructed staff to hold this test claim until the
24 appointment of the seventh member. The seventh member was
25 appointed to the Commission in April 2000. With a full

1 house, the Commission can now definitively vote to approve or
2 deny this test claim.

3 "For this hearing, Commission staff made no changes
4 to the staff analysis and added the transcripts and minutes
5 of prior hearings to the administrative record. Staff finds
6 that state law requires the use of behavioral intervention
7 plans whenever a student exhibits behavior that interferes
8 with their learning or that of others. In contrast, under
9 federal law, behavioral intervention plans are one of many
10 approaches districts may use to address problem behavior. In
11 other words, staff finds that under state law, the use of
12 behavioral intervention plans, under certain circumstances,
13 are required, while, under federal law, the use of such plans
14 is not. Staff recommends that the Commission find that test
15 claim legislation imposes reimbursable state mandated
16 activities upon school districts and approve the behavioral
17 intervention plans test claim as detailed in the staff
18 analysis."

19 Please state your name for the record.

20 MR. TERSTEGGE: My name is Frank Terstegge.

21 MR. CUNNINGHAM: Jim Cunningham, San Diego Unified
22 School District.

23 MS. CAFFERATA: I'm Gail Cafferata, Butte County
24 Office of Education, SELPA.

25 MS. MARTINEZ: Nona Martinez, Department of Finance.

1 MR. STONE: Dan Stone, Deputy Attorney General for
2 the Department of Finance.

3 CHAIRPERSON PORINI: All right. Mr. Cunningham,
4 would you like to begin?

5 MR. CUNNINGHAM: Yes. Thank you.

6 We ask that you approve the test claim based upon
7 the staff analysis because of a few minor corrections that we
8 described in our September 21st, 1991 -- I'm sorry, 1999
9 letter, which is at Bates page 881.

10 At the September 1999 hearing, the Commission staff
11 agreed that these corrections would be appropriate, and I'm
12 assuming that there's no change in that position. The
13 Department of Finance has consistently argued that federal
14 law requires school districts to develop and implement
15 behavioral intervention plans with all the bells and whistles
16 that are spelled out in the regulations that implemented the
17 Hughes Bill (phonetic).

18 Staff correctly rejects this argument. Federal law
19 and regulations have never required that the state or local
20 agencies to develop and implement behavioral intervention
21 plans.

22 Prior to 1997 amendments to the Individuals with
23 Disabilities Education Act, or "IDEA," there was no reference
24 to the behavioral intervention plan or strategies in federal
25 law or regulations. The 1997 amendment in the implementing

1 of regulations added some provisions regarding behavioral
2 intervention strategies, that the -- the language of the
3 U.S. Code is reproduced for you at Bates page 84.

4 There's a critical difference between state law and
5 federal law. The federal provisions require only that the
6 IEP team consider, if appropriate, strategies, including
7 positive behavioral interventions, strategies and supports to
8 address certain behaviors. The words "consider" and "if
9 appropriate" were carefully chosen and they stop well short
10 of imposing a requirement. The IDEA amendments that came out
11 in 1997 had -- there were several bills that were pending
12 before Congress in 1994, 1995, 1996, all of which,
13 quote/unquote, "Were going to add something similar to the
14 language that eventually got adopted, and was not a casual
15 decision for the Congress to chose the words 'consider' and
16 'if appropriate.'"

17 Federal law leaves it to the discretion of the IEP
18 team whether or not to consider any behavioral strategy. The
19 IEP team does not consider any strategy it determines that it
20 is not appropriate. If the IEP team determines that it is
21 appropriate, it considers some strategy. The strategy that
22 the IEP team considers may or may not include positive
23 behavioral interventions.

24 Finally, if the IEP team decides that it is
25 appropriate to consider behavioral intervention strategies,

1 there's no requirement, under federal law, that the IEP team,
2 after such consideration, elected to include a positive
3 behavioral intervention strategy in the child's IEP or to
4 develop or implement behavioral intervention plans for that
5 child. To consider doing some act is definitely much
6 different than to require that act.

7 The Department of Finance also tries to argue that
8 the test claim legislation/regulations implement federal law;
9 staff correctly rejects this argument as well. The Hughes
10 Bill was adopted in the early 1990's. The regulations were
11 adopted in the 1994 time period. The federal requirement, if
12 you think it is a requirement, in IDEA, didn't come into
13 existence until 1997. So it's impossible to have a state law
14 implement a federal requirement, that, if it existed at all,
15 did not exist until seven or eight years after the state law
16 came into play.

17 Mr. Terstegge is the director of the Special
18 Education for Paradise School District. He was formerly the
19 SELPA director for Butte County when we first started this
20 long road. And Mr. Terstegge would like to add some
21 additional testimony regarding the fact that there was no
22 requirement prior to 1997.

23 MR. TERSTEGGE: Thank you. In 1990, the Hughes Bill
24 was before the Legislature and there was an analysis done
25 by the Department of Finance, and I'd direct you to Bates

1 page 641 through 645. The analysis was conducted by
2 Kathy Gaither, and she correctly indicated that -- well,
3 first of all, when the Department of Finance opposed the
4 legislation and -- in her analysis, if you look on page 644,
5 under "Analysis," first and second paragraph, she says,
6 "Current law does not require or prohibit the use of
7 behavioral intervention for special education; however, the
8 current law does prohibit the use of corporal punishment.
9 Currently, each district that uses behavioral intervention
10 develops their own policy and regulations which must be
11 approved by the school board."

12 She also indicated that this would be a mandated
13 cost in the content of her analysis. She said, specifically,
14 that the regulations that would result from the Hughes Bill
15 would be a mandated cost. The regulations, then, were under
16 the adoption process in 1992, latter part of 1992, and, um, I
17 direct you to page 649, the analysis that was done by
18 Carl Rogers (phonetic), and he, at the bottom of paragraph
19 649, he indicated, again, that the regulations themselves
20 would also be a mandated cost.

21 Starting in 1994, there was an attempt to
22 reauthorize IDEA, which is the federal statute mandating
23 special education, and, if you look at Bates page 585 through
24 594, you can observe that there was an attempt to place some
25 comment regarding a requirement for positive behavioral

1 intervention.

2 Again, in 1996, on page 609 through 620, there was
3 another attempt. Both of those attempts at reauthorization
4 failed and this behavioral issue was an issue that was fought
5 out between school folks and advocates and other agencies at
6 the federal level. It was associated with the discipline
7 issue, which happened to be a very hot issue, and still
8 continues to be a hot issue, in special education law.

9 In 1995, if you look at page 581, there was a letter
10 to the Office of Special Education Program, the federal
11 office, that, essentially, offers opinions as to how to
12 implement federal law. If you look on page 581, at the very
13 bottom, they state here, "We agree" -- actually, the last
14 sentence in that paragraph, "We agree that part B does not
15 necessarily require that IEP for disabled students include
16 behavioral methods/plans."

17 In 1997, there was a compromise reached on a number
18 of issues and the reauthorization of IDEA was completed, and,
19 in there, there was a reference to -- well, it was finally
20 placed, to behavioral interventions, and that is on page 804,
21 and it says here, "In the case of a child whose behavior
22 impedes his or her learning, or that of others, consider"
23 underline that word "consider, when appropriate, strategies
24 to include positive behavioral intervention strategies and
25 support to address that behavior."

1 So, again, there's no mandate; essentially, we're
2 required to consider the option of behavioral intervention.

3 MR. CUNNINGHAM: Thank you. I think, as we have
4 shown, there are no federal requirements to develop or
5 implement behavioral intervention plans prior to the 1997
6 amendments; and 1997 amendments do not add a requirement.
7 However, even if you were to believe there was some federal
8 requirement in the 1997 law, the Hughes Bill on the
9 regulations go far beyond what you -- you could contemplate
10 it under federal law. And Ms. Cafferata, who's a behavioral
11 consultant for Butte County, SELPA, will discuss more
12 important areas in which state law exceeds anything that may
13 even -- that may remotely seem as a requirement under federal
14 law.

15 MS. CAFFERATA: Hello. There are several components
16 in the state regulations that do not even appear in the
17 federal regulations, and, specifically, there's a difference.
18 The federal regulations asks that you consider that you would
19 employ a variety of different strategies if they're deemed
20 appropriate by the IEP team.

21 The state regulations ask you, in specific
22 situations, to use a very specific methodology that's based
23 on a specific scientific paradigm, and that methodology comes
24 under the basic premises of applied behavior analysis. And,
25 in the state regulations, it specifically says that you will

1 do a functional analysis assessment. Now, this assessment is
2 very different than the assessment that you would do in
3 determining eligibility or determining current level of
4 functioning.

5 This assessment, through a specific prescriptive
6 process, asks you to determine the function of the child's
7 behavior and what purpose it's serving for him and then to
8 manipulate a variety of variables in order to determine
9 whether or not your hypothesis regarding that function is, in
10 fact, correct or incorrect.

11 And then state regulations asks that you -- after
12 you complete this assessment, that you develop a positive
13 behavioral intervention plan. And that plan, again, is based
14 on the specific methodology, applied behavior analysis. And,
15 included in the regulations, it outlines very clearly what
16 not only is contained in a functional analysis assessment but
17 what is also contained in your positive behavioral
18 intervention plan, and it has to include nine-plus specific
19 components.

20 One of those, the very first one, is it's -- I think
21 the language -- I'm sure it's positive strategies. And not
22 only does it use that language in the state regulations, but
23 it outlines those strategies that are acceptable as positive
24 strategies.

25 Some of the other things that -- I'd like to

1 highlight just a couple things of those nine components of a
2 positive behavior intervention plan that make them so
3 different than the federal regulations. One is the way that
4 you're required to gather your data. It outlines that you
5 have to use three specific sources, and those sources are
6 interviews with significant others, review of significant
7 records, and concrete data collection based on observation.
8 And the observation entails a real specific process. I mean,
9 you just can't visit the child one day in one environment.
10 You have to collect data on the specific behavior, the
11 antecedent, what happens before the behavior, and the
12 consequence, what happens afterwards, in all the environments
13 of the school day and all of the times of the week. So it
14 entails about an entire week of observations that are very
15 prescriptive and clinical, and then a specific analysis of
16 that data to determine what the function of those -- that
17 behavior is, or multiple behaviors.

18 The plan takes it another step beyond the analysis.
19 You have to have a specific way of collecting data that's
20 going to indicate that your plan is, in fact, teaching the
21 child the behavior that is a replacement for their
22 inappropriate behavior. It outlines a process for the IEP
23 team to judge the efficacy of your plan; and, if it is not
24 effective, it charges the IEP team with a process to go
25 through to redo your assessment and update your plan.

1 I'm going to leave it at that, because I could get
2 into a huge behavioral lecture here. One other difference
3 that is really significant is that the IDEA or the behavior
4 intervention case manager, or the BICM -- I believe
5 Department of Finance came to the same conclusion in 1992,
6 and that was Bates page reference 649 to 650, that the
7 Behavior Intervention Case Manager, BICM, was an additional
8 requirement that they added to the IEP team in the case of
9 serious behavior problems.

10 Well, that seems fairly simplistic; however, the
11 state regulations outline the roles and responsibilities of
12 that BICM and they're considerable. They don't have to
13 actually do the assessment, nor do they have to do the
14 implementation of the subsequent plan, but they are
15 responsible for assuring that the process, the method, of
16 functional analysis assessment is followed and that the plan
17 is implemented using best practice for positive behavioral
18 interventions.

19 So they're, actually, a case manager for the
20 behavioral piece.

21 The other piece that you don't find in state --
22 rather, federal regulations, are the requirements that the
23 state has regarding emergency interventions. They outline,
24 specifically, what school districts may and may not do in
25 response to emergency interventions, and it outlines and

1 defines exactly what an emergency constitutes.

2 The state regulations also require that local SELPAs
3 outline which responses school personnel may make in response
4 to an emergency. State regulations, additionally, require
5 SELPAs to provide training to staff in those emergency
6 responses.

7 Um -- and, lastly, I think regarding the emergency
8 interventions, the state regulations require a system of
9 ongoing training, very similar to CPR requirements, training
10 to be -- training to provide CPR. The training for
11 management of assaultive behavior is required to be done
12 initially, and then we have to do it, a recertification, on a
13 clearly basis; and that's significant.

14 Federal regulations have no mention of emergencies
15 or acceptable responses to emergencies or training that staff
16 must receive to respond appropriately.

17 CHAIRPERSON PORINI: All right. Department of
18 Finance?

19 MR. CUNNINGHAM: I'm sorry. Mr. Terstegge has one
20 other comment on the difference that state law has -- excuse
21 me -- with respect to the SELPA plans.

22 MR. TERSTEGGE: Yes. Gail mentioned many of the
23 requirements. This all has to be included in the SELPA local
24 plan, which is reviewed every four years, and, essentially,
25 spells out the activity and relationships among the school

1 districts and county office of education in most SELPAs.
2 This, essentially, required a tremendous amount of planning
3 and development in working out this whole process. We had
4 to, essentially, include all of the details that Gail worked
5 out plus, essentially, the procedures as to how we're going
6 to carry those details out, and any other requirements there,
7 so there was a burden also placed at the SELPA level in
8 bringing this in line with the local SELPA plan.

9 CHAIRPERSON PORINI: Department of Finance?

10 MR. STONE: Good morning. Dan Stone. It still is
11 morning.

12 My intention was to be relatively brief on this
13 subject because we did have a hearing about a year ago in
14 which the parties' contentions were discussed at some
15 length. But, in view of the comments of claimant, I did want
16 to at least highlight the principal points that the
17 department has made before.

18 First of all, federal law, the IDEA, the equal
19 protection guarantees, are not found only in specific
20 regulations in the statute; of course, there are departmental
21 interpretations in federal departments. And another
22 framework in which the federal law is explained and
23 interpreted is the courts.

24 Whatever the Department of Finance may have said
25 with respect to early legislation, we have cited the

1 Commission to several federal cases, or at least cases
2 brought under the federal law, in which it was determined
3 that these behavioral intervention programs are required
4 under federal law.

5 These preceded the statute that's being challenged
6 here. One is the Cremeans case, which was 1993. These are
7 all in our initial brief, by the way, which I believe starts
8 at Bates 107. A second is the Oberti case, a 1992 case in
9 New Jersey, wherein local school districts were sued under
10 federal law for their failure to include -- in an IEP, which,
11 of course, is the principal structure of the federal special
12 education program, they failed to include an appropriate
13 behavioral intervention program for a child that appeared to
14 be in need of one, and the court said that, therefore, they
15 violated federal law.

16 And when, under federal law, a certain program or
17 intervention or approach to a student is required, it has
18 also, to be, of course, incorporated specifically within the
19 IEP, the individual educational plan, for that student.
20 That's federal law, too, under the Chris D. case, as well as
21 the Cremeans case, that makes that clear. These were also
22 cited in our initial brief.

23 So, when they say there was no federal requirement
24 and then point to a specific statute or a specific
25 U.S. Department of Education regulation, they're sort of

1 closing the scope of the Commission's view unrealistically.
2 You have to look at the federal law as it's interpreted and
3 applied by the court. And, when you do, you'll see that
4 behavioral intervention programs were, in fact, included
5 under federal law long before the 1997 federal amendments, to
6 which Mr. Cunningham referred.

7 And even as to those amendments, in 1997, Congress
8 made it very clear, in the House reports we cited, that those
9 were clarifying amendments, to make it clearer to people what
10 the federal requirements are, because there was some
11 confusion. They also sought to consolidate, in one section,
12 one provision, the requirements that were, in some cases,
13 defined by the courts and in other cases defined elsewhere in
14 the statute. But it was clarifying. They didn't say we're
15 adding something new now that you've never had to do before.

16 Similarly, with respect to the comment that state
17 law requires you to follow up and to make sure that the plan
18 is effective, and if it isn't to change it, of course federal
19 law requires exactly that kind of thing. The main federal
20 requirement is to ensure, in an ongoing way, that special
21 education students receive a free, appropriate, and
22 meaningful public education.

23 If you say at the outset, when the child first comes
24 to you, say in the third grade, that she needs X, Y and Z, as
25 far as special education programs, and then never pay anymore

1 attention to her until she graduates from grade school or
2 graduates from junior high, you're not obeying the federal
3 law. Of course, there has to be ongoing monitoring. And if
4 those programs initially assessed as being needed by that
5 student aren't working and she's not getting the meaningful
6 education that she needs or if she's disrupting the education
7 requirements of fellow students, then, of course, under
8 federal law, you have to go in and revise it. You have to
9 reassess what the problem is and revise your approach to it
10 so that it will be resolved.

11 Also, as we pointed out before, and there's a
12 comment at Bates 129 in our brief, the state -- to challenge
13 the state statute, and the subsequent regulations were
14 enacted as part of a settlement for a lawsuit brought
15 against, I believe, the Superintendent of Public Instruction,
16 under federal law, suggesting that some methodology used by
17 California to intervene in these kind of behavioral problems
18 was inappropriate, under federal law, and the parties agreed
19 that this statute and these regulations would provide
20 appropriate assurance, under federal law.

21 Also, we pointed out that the federal law is not all
22 inclusive; it goes to my point about court interpretation.
23 But, in addition to courts, the federal law specifically
24 contemplates -- it states that it will add, what they call,
25 "detail and shading." In some cases, the federal law is very

1 skeletal. Here, you have a reference that free, appropriate
2 education includes related services, and the federal law
3 lists some, but it's quite specific that the list is not
4 exclusive, that there are other related services, that you
5 can imagine, that would logically follow in an effort to
6 provide the appropriate education to these special education
7 students.

8 This falls within related services and it is exactly
9 what's the federal law contemplates. It's the state's effort
10 to add the requisite detail and shading and to be certain
11 that there's some uniformity in the state's response in these
12 situations. And we cited Education Code Section 56520 (a)
13 and (b), first paragraph in each, where the state said, in
14 enacting the challenged legislation, that "this is in order
15 to provide and ensure appropriate and meaningful educational
16 programs and to ensure," another federal watch word, "that
17 the pupils will have a right to the least restrictive
18 educational environment."

19 Again, it shows that all they're trying to do, the
20 State of California, in this statute and in these regulations
21 is to comply with and to implement the federal law.

22 With that, I'll turn it over to my colleague,
23 Ms. Martinez.

24 MS. MARTINEZ: Just to reiterate a little bit of
25 what Mr. Stone has said, federal law does require free and

1 appropriate public education for all handicapped pupils. In
2 order to ensure that that occurs, school districts and county
3 offices of education are required, under federal law, to do
4 an individualized education plan, individualized to the
5 specific student that is being served. To the extent that in
6 order for them to receive a free, appropriate public
7 education, and to benefit from that education, they require
8 some level of behavioral intervention, predominantly in order
9 to not disrupt class, to stop injurious situations to
10 themselves or others.

11 A plan is created by the IEP team. An IEP team is
12 designated under federal law as are the components that must
13 be included in the IEP. The IEP includes a list of all
14 services that are to be provided, the time lines for those
15 services and potential outcomes for those services that are
16 expected; and, to the extent that behavioral interventions
17 are necessary for this student, they would be included in the
18 IEP team, as identified in the previous documents, that the
19 behavioral intervention plan is included in the IEP and is
20 the road map for the services that are provided for those
21 children, and, therefore, this fits under federal law.

22 CHAIRPERSON PORINI: All right. Questions?

23 Ms. Steinmeier?

24 MS. STEINMEIER: First, an observation then a
25 question. If first observation is: We have dealt with a lot

1 of special education cases. For many of us, this is not new
2 stuff. Mr. Lazar is, obviously, the person who's had the
3 least experience with this, but, in a court -- a very famous
4 court case, this Commission was told that we need to compare
5 federal law with state law. And, to the extent that it
6 concedes the better law, which is our judgment call, then a
7 mandate would be found.

8 So I think we need to focus on that, what the
9 difference is. Court cases not -- other court cases
10 notwithstanding, we need to look at the law; and that's what
11 we were told to do.

12 Then a question of our staff or claimants: This
13 California law, specifically, includes special education
14 students but it doesn't include all students.

15 If someone is displaying certain behaviors, would it
16 include them even if they were not previously identified as
17 special ed., or is it only related to special ed. students?

18 MS. CAFFERATA: The law -- may I answer it?

19 MS. STEINMEIER: Yes.

20 MS. CAFFERATA: Gail Cafferata.

21 The law is very specific in that the children have
22 to have an active IEP. Now, the regulations in the Ed. Code,
23 in order for the Hughes Bill mandates and the subsequent code
24 to be in play, the regulations where it becomes gray,
25 regarding discipline, and disciplinary procedures, as far as

1 suspension, children who have been suspended that are not
2 identified as special ed. students, that after the fact, if
3 districts have found to be -- haven't gone through the
4 process of identifying them, then these regulations would be
5 in place.

6 Does that make sense?

7 MS. STEINMEIER: Yeah, I've been through this
8 before, being on the school board, but the rest of them may
9 not be clear.

10 MS. CAFFERATA: Yeah.

11 MS. STEINMEIER: But there's been, actually, sort of
12 a rash of these kinds of cases for a while where, if a child
13 had a behavior-related problem, it created an expulsion or a
14 suspension. But, many times, after the fact, you try to get
15 them identified as special ed.

16 MS. CAFFERATA: Yes.

17 MS. STEINMEIER: Most of those, in our districts,
18 were never identified. It was sort of a back-in way to try
19 and go around the expulsion and suspension laws but it did
20 bring it to fore. So, really, it is designed for special ed.
21 students?

22 MS. CAFFERATA: Yes.

23 MS. STEINMEIER: That was my bottom line question.

24 MS. CAFFERATA: Okay.

25 MS. STEINMEIER: Then, also, I have another

1 question. I guess it's to Mr. Cunningham.

2 You mentioned certain changes, minor changes, that
3 you wanted made in the staff recommendation, and that was in
4 a letter, and I don't have that letter in front of me, but I
5 do recall at the last hearing I asked a question of
6 Mr. Scribner and he didn't have any objections to including
7 those, so let's make sure we get that little housekeeping
8 chore taken care of.

9 MR. CUNNINGHAM: Yeah, the letter should be at
10 your -- in your binders at Bates page 881.

11 MS. STEINMEIER: Okay.

12 MR. CUNNINGHAM: That's where it starts.

13 MR. SCRIBNER: Actually, it's in the supplemental.

14 MS. STEINMEIER: It's in the supplemental, okay.

15 MR. SCRIBNER: And we still agree with the
16 modifications from that letter.

17 MS. STEINMEIER: Okay.

18 MR. STONE: Member Steinmeier?

19 MS. STEINMEIER: Yes.

20 MR. STONE: If I may comment, briefly, on your point
21 of comparing federal to state law, two of the points made by
22 the claimants today and previously go to the supposed
23 difference between them.

24 On one they say that, under federal law, as amended
25 in 1997 to clarify the previous existing requirements, that

1 the IEP team need only consider behavioral intervention
2 plans, I would point out that under both the state statute
3 and the state regulations, and, actually, this is something
4 that Member Gomes pointed out in September '99, that there's
5 similar language, it's not identical, but, looking at Bates
6 page 83, the statute itself, at 56523(b) subparagraph 2,
7 requires that this behavioral intervention -- interventions
8 be utilized and incorporated in an IEP, if appropriate, quote
9 "if appropriate," so it's not across the board; it's not a
10 requirement imposed in every situation.

11 And, by the way, I believe Mr. Terstegge, in
12 testifying in September 1999, conceded that there's nothing
13 in the state requirements that would make a local school
14 district or a SELPA impose a behavioral intervention plan
15 where it was not deemed appropriate or where it would harm a
16 student.

17 And then, secondly, I wanted to point out the
18 regulations at Bates page 30, and I'm looking at section
19 3052(C) little (c) where it talks about IEP team meetings,
20 then, again, it says that IEP team meetings shall be held to
21 reviewer results, and, if necessary, to develop a behavioral
22 intervention plan. So, again, it's if necessary.

23 It's based, as are the federal laws, on the judgment
24 and expertise of the IEP team.

25 And then, secondly, another point they raised, is

1 that under federal law there are other approaches that are
2 permissible. I don't think anything in the state law says
3 that other approaches are outlawed by the IEP team or the
4 experts they bring to bear. But, even putting that point
5 apart, and I tried to make this point a year ago, but, for
6 the sake of new members and just because I think it's an
7 important point, if you imagine -- imagine a federal mandate
8 on the states and local school districts that says, here's
9 the problem with respect to special ed. kids, and there are
10 three ways that you can respond to that problem, to resolve
11 it under federal law, to comply with our requirements, A, B,
12 C, and a state says -- well, for our purposes, and, in our
13 judgment, B, we think, is the best way, and, in order to
14 standardize the approach, we make sure that all of the school
15 districts within the state comply with the federal law, we're
16 going to pass statutes and regulations explaining what B is
17 and how it should be followed.

18 If you can say that's not complying with the federal
19 mandate because the state could have gone A or could have
20 gone C, then, suppose, the state went with A. It's not a
21 federal mandate because they could have gone B or C; and, if
22 they went C, it's not a federal mandate because A and B were
23 options. It makes no sense.

24 Obviously, the state is trying to comply with the
25 federal requirement. It's chosen a way that is recognized

1 throughout the land as an appropriate way to respond to the
2 requirement. So it's a federal rather than a state mandate.
3 The fact that there may have been alternative approaches
4 doesn't mean it's a state mandate. The overriding -- the
5 overriding policy to which we're responding is Congress's
6 policy with respect to special education students; it's not
7 something new the state has dredged up on its own. It's a
8 compliance matter.

9 Thank you.

10 CHAIRPERSON PORINI: Mr. Terstegge?

11 MR. TERSTEGGE: Yes. My comments at the earlier
12 hearing -- the point I was making is that we are,
13 essentially, mandated to a process that is very extensive,
14 before a decision is made, and the law is very clear in
15 exactly every step in that process; then the IEP team can
16 make a decision as to whether or not an intervention is
17 appropriate, but it's a very, very costly process that is
18 mandated to carry out in order to make that final decision.

19 And I think that's it.

20 CHAIRPERSON PORINI: All right. Mr. Cunningham?

21 MR. CUNNINGHAM: Yeah. Thank you.

22 Again, even assuming that Mr. Stone's case is saying
23 that there is something that's required, in the way of
24 behavioral strategy under federal law, there is nothing that
25 he cited that says that we have to go through all the detail

1 and extensive and time-consuming steps that are outlined in
2 this regulation.

3 And if, in fact, there were ultimate choices that we
4 could have done, some of which may have been significantly
5 less expensive, then the state has chosen this one, with all
6 the bells and whistles, with all the detailed requirements
7 that are specified in this regulation, than this regulation
8 in the statute does impose a mandate.

9 CHAIRPERSON PORINI: Other questions or comments?

10 Ms. Steinmeier?

11 MS. STEINMEIER: I still believe that it's
12 excessive, so I will move approval of the staff analysis with
13 the changes that we indicated. If you want them enumerated,
14 we could do that, but they were minor changes.

15 CHAIRPERSON PORINI: All right.

16 Is there a second?

17 MR. BELTRAMI: Second.

18 CHAIRPERSON PORINI: All right. We have a motion
19 and a second.

20 Is there further discussion?

21 (No response.)

22 CHAIRPERSON PORINI: Role call.

23 MS. HIGASHI: Mr. Beltrami?

24 MR. BELTRAMI: Yes.

25 MS. HIGASHI: Ms. Halsey?

1 MS. HALSEY: Yes.

2 MS. HIGASHI: Mr. Lazar?

3 MR. LAZAR: Aye.

4 MS. HIGASHI: Mr. Sherwood?

5 MR. SHERWOOD: No.

6 MS. HIGASHI: Ms. Steinmeier?

7 MS. STEINMEIER: Aye.

8 MS. HIGASHI: Ms. Aronberg?

9 MS. ARONBERG: Yes.

10 MS. HIGASHI: Ms. Porini?

11 CHAIRPERSON PORINI: No.

12 All right.

13 MS. HIGASHI: Staff recommendation moved.

14 MR. CUNNINGHAM: Thank you.

15 CHAIRPERSON PORINI: Okay. Move on to Item No. 8.

16 MS. HIGASHI: Item No. 8 will be presented by

17 Pat Hart Jorgensen.

18 CHAIRPERSON PORINI: All right.

19 MS. JORGENSEN: "The Charter Schools II test claim

20 was filed with the Commission on August 23, 1999, by San

21 Diego Unified School District and the Los Angeles County

22 Office of Education, as co-claimants.

23 "In a letter dated July 11, 2000, the Department of

24 Finance requested an extension of time to file comments on

25 the Charter Schools II test claim. This was the third

1 extension the Department had requested for extensions of
2 time. In this request, the Department requested the
3 extension to provide them an opportunity to consolidate their
4 comments on this test claim with their comments on Charter
5 Schools III, which was filed on June 29, 2000.

6 "On July 13, 2000, the department's request was
7 granted for good cause. However, the department was informed
8 that since the Charter Schools II test claim is not
9 consolidated with the Charter Schools III test claim,
10 separate comments must be filed on each of the two test
11 claims.

12 "The claimant, San Diego Unified School District, in
13 a letter dated July 17, 2000, requested the Commission deny
14 the department's request for an extension of time, contending
15 that the department had not set forth good cause for its
16 request. The claimant also requested, in the event the
17 extension was granted, that an appeal of the executive
18 director's action be placed on the agenda for the July 27,
19 2000 Commission hearing.

20 "Since the request was received on July 19, eight
21 days before the July 27 hearing, this item would not have
22 been noticed within the ten days required, and since this
23 item did not qualify as an emergency, as specified under
24 statute, this item was not placed on the July 11th agenda.
25 The department's comments on the Charter Schools II test

1 claim were received on August 2, 2000.

2 "The Commission's regulations provide that any party
3 may appeal to the Commission any action or decision of the
4 executive director.

5 "In this case, the Commission may either:

6 "Deny the claimant's appeal; or.

7 "Vacate the executive director's action to approve
8 the department's request for an extension of time."

9 Would the parties please state their name for the
10 record?

11 MR. CUNNINGHAM: Jim Cunningham, San Diego Unified
12 School District.

13 Thank you. We filed this test claim -- San Diego
14 Unified filed this test claim jointly with the Los Angeles
15 County Office of Education on August 23rd 1999; and, pursuant
16 to a letter sent out by the executive director to all state
17 agencies, state agency comments were due by September 30,
18 1999. No state agency filed comments.

19 The next action that occurred was on June 8, 2000,
20 we're now nine months past the date that we filed the test
21 claim. The Department of Finance requested an extension of
22 time to respond to the test claim because the individual
23 responsible for preparing the document has other time
24 commitments during the effective period, specifically
25 preparation of the state budget, in time to meet the July 1st

1 deadline.

2 Again, I don't believe they were working on the
3 July 1st deadline for this state budget all the way from
4 August of 1999 through June.

5 The Commission's executive director approved that
6 request for good cause and extended the deadline to July
7 13th, 2000. On July 30th, the Charter Schools III test claim
8 was filed which alleged costs under the same chapter as
9 Charter Schools I and Charter Schools II and some additional
10 statutes.

11 On July 10th, the Commission determined that the
12 test claim was complete but failed to sever portions of the
13 test claim that alleged the same statutes and code sections
14 that were already included in the earlier test claims.

15 Then on July 11th, the Department of Finance
16 requested a further extension of time so they could
17 consolidate their response with the new Charter Schools III
18 test claim stating that they believed that their claims were
19 sufficiently related to justify a concurrent consideration of
20 the merits.

21 Again, these test claims had not been consolidated,
22 and, in fact, are not appropriate for consolidation. This
23 request, the July 11th, 2000 request, does not state good
24 cause. Good cause is set forth -- the basis for good cause
25 is set forth under section 1181.1 of your regulations.

1 The Department of Finance did not allege good cause;
2 no good cause existed. The executive director in this
3 Commission should not have granted the request for extension
4 for good cause.

5 CHAIRPERSON PORINI: All right. Members, any
6 questions?

7 Mr. Beltrami?

8 MR. BELTRAMI: Paula, do you have any comment?

9 MS. HIGASHI: The regulations also provide a general
10 catch-all for good cause, any other factor that might be
11 related to the claims. Here, I felt that consideration of
12 the two at the same time, if that was the view, in terms of
13 being an analyst, that I could certainly understand that that
14 is the reason for wanting to have just an additional period
15 of time, before they send in their comments on Charter
16 Schools II, and their comments did come in very quickly after
17 that point.

18 The two test claims have not been consolidated.

19 CHAIRPERSON PORINI: All right.

20 MR. LAZAR: Is there a date that has been selected?

21 MS. HIGASHI: No. We have not started the analysis
22 yet.

23 MR. LAZAR: Do you have an idea of when that might
24 be?

25 MS. HIGASHI: I don't have my long-term planning

1 sheet with me, but it was not one that was immediately set
2 for hearing. So the time extension did not have an impact,
3 in terms of current staff workload, preparing agenda items
4 for hearing.

5 MR. LAZAR: Your sense is a few months before the
6 end of the year or after the first of the year?

7 MS. HIGASHI: Um --

8 MS. JORGENSEN: I would say it would have to be
9 after the first of the year, as long as there's not an
10 agenda, and it does not appear that it's going to be ready.

11 MS. HIGASHI: It's not even on our current horizon,
12 in terms of workload.

13 CHAIRPERSON PORINI: So Paula, in your opinion, it
14 didn't create a detriment to our workload to grant the
15 extension?

16 MS. HIGASHI: No, it did not.

17 CHAIRPERSON PORINI: All right.

18 MR. CUNNINGHAM: What it does do, though, is it
19 delays -- further delays the consideration of the test claim
20 beyond your regulations and statutory requirements to proceed
21 through the entire process in 18 months. We're at the year
22 anniversary of filing this and we haven't even gotten the
23 staff analysis yet, part of it is due to the fact that the
24 Department of Finance continues to ask for continuances for
25 extensions of time.

1 CHAIRPERSON PORINI: They asked for multiple
2 extensions of time on this?

3 MR. CUNNINGHAM: This is the third.

4 CHAIRPERSON PORINI: And do claimants ever ask for
5 extensions of time?

6 MR. CUNNINGHAM: We do but there's a significant
7 difference between a claimant asking and a state agency. It
8 delays it to the benefit of the state. The state does not
9 begin paying these claims or any interest on these claims
10 until one year after the statewide cost estimate has been
11 adopted. So it's to the benefit of the state to delay the
12 process, whereas the claimants may have a reason for
13 delaying, but it's kind of in our own pockets.

14 So even if -- I don't think you can apply the same
15 standard because it costs us money. It saves the state money
16 to delay.

17 CHAIRPERSON PORINI: Mr. Beltrami?

18 MR. BELTRAMI: Maybe I misunderstood.

19 Paula, you said that the basis of your decision was
20 the possible consolidation of the two --

21 MS. HIGASHI: No. I said it was -- the Department
22 of Finance requested the opportunity to consider to review
23 them concurrently. And, when I granted the request for the
24 extension, I specifically stated in the letter that the
25 responses should be filed separately. So there was no

1 consolidation made, although Finance's letter suggested it, I
2 guess I could say.

3 CHAIRPERSON PORINI: Ms. Steinmeier?

4 MS. STEINMEIER: I appreciate Mr. Cunningham's --
5 especially his last comments on -- to whose advantage it is.
6 But, also, in considering both of these cases, and we've done
7 this before, we had similar issues involved, it helps the
8 Commission to be considering them almost concurrently, even
9 though they're really not combined.

10 We had some today, where some of the same issues are
11 involved, and it does help us, as Commissioners, to have them
12 in some similar juxtaposition. So that's why I don't object,
13 in this case, to Paula's putting this off. But, in general,
14 I do agree, as a general strategy, it's not a good idea to
15 have continuous delays. That works to the negative side.

16 But, balancing those two out, Mr. Cunningham, I do
17 think -- because the issues are similar in both of these, so
18 the same law is involved.

19 MR. CUNNINGHAM: Yeah, and I appreciate that, and
20 you haven't seen anything else.

21 MS. STEINMEIER: No, I haven't.

22 MR. CUNNINGHAM: But I will submit to you that, in
23 my opinion, the test claims present very different issues,
24 including eligibility of types of entities for reimbursement
25 under these statutes. So I do not believe that they would be

1 a good candidate for consolidation, no longer in the regs.,
2 so I think it's timely for them to be consolidated.

3 MS. STEINMEIER: So the only similarity is that they
4 are school issues?

5 MR. CUNNINGHAM: They both deal with the same
6 subject matter.

7 MS. STEINMEIER: Right. But, for our background and
8 understanding, it is helpful for us to have them in fairly
9 close proximity to each other. That still doesn't change,
10 Mr. Cunningham.

11 MR. CUNNINGHAM: I understand. Thank you.

12 CHAIRPERSON PORINI: Mr. Sherwood?

13 MR. SHERWOOD: Madam Chair, I don't have any further
14 comment, but I would like to move for the denial of the
15 claims.

16 CHAIRPERSON PORINI: Do I have a second?

17 MS. ARONBERG: Second.

18 CHAIRPERSON PORINI: All right. Is there further
19 discussion?

20 (No response.)

21 CHAIRPERSON PORINI: We have a motion and a second.
22 May I have role call.

23 MS. HIGASHI: Mr. Lazar?

24 MR. LAZAR: Yes.

25 MS. HIGASHI: Mr. Sherwood?

1 MR. SHERWOOD: Yes.

2 MS. HIGASHI: Ms. Steinmeier?

3 MS. STEINMEIER: Yes.

4 MS. HIGASHI: Ms. Aronberg?

5 MS. ARONBERG: Yes.

6 MS. HIGASHI: Mr. Beltrami?

7 MR. BELTRAMI: Yes.

8 MS. HIGASHI: Ms. Halsey?

9 MS. HALSEY: No, sorry.

10 MS. HIGASHI: And Ms. Porini?

11 CHAIRPERSON PORINI: Yes.

12 MS. HIGASHI: Motion is carried.

13 MR. CUNNINGHAM: Thank you.

14 CHAIRPERSON PORINI: All right. At this point in

15 time, we are going to recess for lunch. We'll be back at

16 approximately 1:30, although it may be closer to 1:45. So

17 we're in recess.

18 Thank you.

19 (Whereupon the noon recess was taken.)

20 CHAIRPERSON PORINI: All right. Mr. Lazar isn't

21 here, but I'm sure he'll be back in just a moment.

22 We'll go ahead and get going with Item No. 9. This

23 is incorrect reductions claims.

24 MS. HIGASHI: This item will be presented by

25 Sean Avalos.

1 MR. AVALOS: You mean 9a?

2 MS. HIGASHI: Yes, you'll be doing both of them,
3 9 and 9a. We'll take 9a first. It's a motion filed by the
4 claimant regarding the disqualification of the State
5 Controller's representative.

6 CHAIRPERSON PORINI: All right.

7 MR. AVALOS: Good afternoon.

8 "The San Diego Unified School District request that
9 the State Controller's representative be disqualified from
10 hearing any matter related to the graduation requirement
11 incorrect reduction claim filed by the district.

12 "San Diego Unified School District filed an
13 affidavit stating that 'Unless the Commission member
14 representing the Controller is disqualified, the district
15 cannot be afforded a fair and impartial hearing on the
16 incorrect reduction claim,' because:

17 "The Controller is a party to the incorrect
18 reduction claim; and

19 "Reasonable persons would doubt the Controller's
20 impartiality in an action that challenges a prior decision by
21 the Controller.

22 "Staff recommends that the San Diego Unified School
23 District be permitted to present its request for
24 disqualification, followed by a response from the State
25 Controller's representative. Then, the other Commission

1 members may determine if they choose to act upon the
2 district's request."

3 Will the parties and representatives please state
4 their names for the record.

5 MR. CUNNINGHAM: Jim Cunningham, San Diego Unified
6 School District.

7 MS. BERG: Carol Berg, Education Mandated Cost
8 Network.

9 MR. YEE: Jeff Yee, State Controller's Office.

10 MR. SILVA: Sean Silva, State Controller's Office,
11 staff counsel.

12 MR. CERVINKA: Pete Cervinka, Department of Finance.

13 CHAIRPERSON PORINI: All right. Mr. Cunningham,
14 would you like to open?

15 MR. CUNNINGHAM: Yeah. Thank you. On the first
16 item, the written submission specified the reasons we believe
17 that the Commission should disqualify the Commission member
18 representing the Controller's office. The one reason is that
19 due process requires that there be an impartial decision
20 maker. Unlike other types of claims, an incorrect reduction
21 claim is an action against the State Controller's Office
22 challenging the decision of the State Controller's Office
23 representatives.

24 If the State Controller is a party, neither she nor
25 any of her designees may be involved in the decisionmaking.

1 The second reason is: This disqualification is
2 appropriate if the potential decision maker, in the eyes of a
3 reasonable person, would have doubts as to that hearing
4 officer's partiality. And we've, in our written materials,
5 stated the legal -- the statutes and the cases that represent
6 that issue.

7 Showing of actual bias is not necessary, instead,
8 disqualification is required if a person aware of the facts
9 might reasonably entertain a doubt that the Controller or any
10 Controller's designee would be able to be impartial in an
11 action against the Controller.

12 We believe that the member representing the
13 Controller should recuse herself, but, if she does not recuse
14 herself, we request that the other Commission members vote to
15 disqualify the member representing the Controller from
16 participating in incorrect reduction claim.

17 Thank you.

18 CHAIRPERSON PORINI: All right.

19 Ms. Aronberg?

20 MS. ARONBERG: By virtue of the law, the State
21 Controller has a seat on this Commission and there's no
22 statute or regulation that requires or even suggests that the
23 State Controller's representative dismiss herself or that
24 that calls for disqualification in a situation such as this,
25 where other representatives of a large, huge,

1 multi-functioning government office from a totally separate
2 division happening to be sitting at this table as witnesses
3 in favor of or against a claim, such as yours.

4 Actually, analogies can be drawn to almost any
5 member of this Commission. And, for example, it would be
6 absurd to say that the Chair should step down every time the
7 Department of Finance sits at the table, or, every time
8 there's a school claimant, that Ms. Steinmeier should step
9 down. So to carry it to its logical extreme, your argument
10 is a little --

11 MR. CUNNINGHAM: Well, you're the lawyer.

12 MS. ARONBERG: In any event, with respect to my
13 partiality, when I take this chair, I act independently, and
14 this matter has -- I actually have not discussed it with the
15 Controller, and I have absolutely no connection of any kind
16 or any communication from anyone from our accounting and
17 reporting office, and, in fact, I never have, to my
18 recollection, and certainly not these gentlemen.

19 CHAIRPERSON PORINI: All right. Members, does
20 anyone have any questions, comments?

21 Ms. Steinmeier?

22 MS. STEINMEIER: I do have a concern, and it's based
23 on what Cindi said at the end. If we go down this road, and
24 this would be the first time we've ever done that in any
25 case, I know that Mr. Cunningham tries to say that this is

1 different, but, still, in a global since, it's the same.

2 And I think what we have -- we have always relied,
3 and I am counting on, us individually recusing ourselves if
4 any of us feel that we have any conflict because we were
5 somehow involved personally, not just the organization that
6 we represent. And I'm, at least at this point, not willing
7 to change that, and I would have to see something else to
8 make me change my mind.

9 CHAIRPERSON PORINI: Mr. Beltrami?

10 MR. BELTRAMI: I agree with Ms. Steinmeier. Of all
11 the seven members, I probably can be the most impartial, so I
12 don't know of any cases -- since it's rare to have a case
13 that deals with the public as an entity, but, I, also, would
14 hope that anyone that does see a possible conflict, would
15 recuse themselves so that there would not be even the
16 appearance of nonimpartiality.

17 But I think I would need more than what we have
18 today.

19 CHAIRPERSON PORINI: All right. Any other
20 comments?

21 (No response.)

22 CHAIRPERSON PORINI: Hearing none, it does not look
23 like there is a motion for a dismissal, so we'll go ahead and
24 go onto the body of the item.

25 Staff?

1 MR. AVALOS: Good afternoon.

2 "The San Diego Unified School District filed this
3 incorrect reduction claim, pursuant to the graduation
4 requirement mandate (4435) after the State Controller's
5 Office reduced its reimbursement claims for teachers' salary
6 by 16.2 million dollars for fiscal years 1984 through
7 1995-96.

8 "San Diego Unified School District contends the
9 reimbursement claims were incorrectly reduced because:

10 "The State Controller's Office lacks the authority
11 to audit and reduce claimant's reimbursement claim;

12 "The State Controller's Office performed an improper
13 audit of claimant's reimbursement claim;

14 "The State Controller's Office established a
15 standard of general application without the benefits of law
16 or due process of rulemaking;

17 "The State Controller's Office incorrectly reduced
18 claimant's cost reimbursement claim based on factors outside
19 of the parameters and guidelines and claiming instructions;.

20 "The State Controller's Office arbitrarily denied
21 payment of teachers' salaries on similar claims filed by
22 other school districts; and

23 "The State Controller's Office has the burden of
24 proof to demonstrate that the claimant did to the experience
25 offsetting savings.

1 "The State Controller's Office refutes claimant's
2 contentions, and in conjunction with the Department of
3 Finance, asserts that its adjustments were performed in
4 accordance with the parameters and guidelines, and claiming
5 instructions which require the claimant to identify and
6 deduct any offsetting costs from the amounts claimed, or in
7 the alternative, provide supporting documentation to explain
8 the absence of such offsetting savings.

9 "Furthermore, the California Department of Education
10 asserts that school districts should not have to incur any
11 increased costs related to the additional science classes,
12 since the claimant could have adjusted its teaching staff in
13 such a way as to result in no net cost to the district for
14 the hiring of additional science teachers.

15 "Staff finds that the State Controller's Office did
16 not incorrectly reduce San Diego Unified School District's
17 reimbursement claims base on the findings that's listed on
18 page 24 of the staff analysis."

19 CHAIRPERSON PORINI: Mr. Cunningham, would you like
20 to begin?

21 MR. CUNNINGHAM: Yes. Thank you.

22 Despite the volumes of records --

23 CHAIRPERSON PORINI: One moment.

24 Paula, did you have a --

25 MS. HIGASHI: I just want to make sure all the

1 parties state their name for the record.

2 MR. CUNNINGHAM: I'm sorry. Jim Cunningham for the
3 San Diego Unified School District.

4 MS. BERG: Carol Berg, Education Mandated Cost
5 Network.

6 MR. YEE: Jeff Yee, State Controller's Office.

7 MR. SILVA: Sean Silva, State Controller's Office,
8 staff counsel.

9 MR. CERVINKA: Pete Cervinka, Department of Finance.

10 CHAIRPERSON PORINI: All right. Sorry.

11 MR. CUNNINGHAM: Okay. You have in front of you
12 volumes of information, but this is -- the incorrect
13 reduction claim actually presents a very simple but an
14 extremely important question for this Commission, and the
15 question is whether the state can impose a new program and
16 yet avoid its constitutional obligation to reimburse the
17 school district by either requiring or authorizing a local
18 agency to eliminate a local program in order to fund a state
19 program.

20 And the clear answer to that question is no. They
21 cannot avoid their obligation in such a manner.

22 The State Controller and your staff recommend that
23 you ignore the constitution and deny our incorrect reduction
24 claim. Their position is that the state may avoid its
25 reimbursement obligation because school districts either did

1 or should have eliminated local programs to fund the state's
2 program. They assert that we either did or should have laid
3 off teachers who teach elective subjects in order to add the
4 teachers -- or to come up with the resources to add the
5 teachers who teach the science courses.

6 We did provide evidence -- in fact, probably the
7 only evidence, on the point of the -- in the costs savings,
8 and I want to go into the costs saving issue in more detail.
9 But the only evidence in front of you on the issue of whether
10 San Diego did lay off science -- non-science teachers in
11 order to hire science teachers is that we did not. We had no
12 costs savings because we did not lay off any non-science
13 teachers.

14 That leaves you with -- if you're going to adopt the
15 staff recommendation with the position of saying that
16 San Diego should have eliminated a local program in order to
17 fund the state's program, and there's no basis, in law, for
18 you to make that finding; in fact, the constitution requires
19 that you make the exact opposite finding, and that is that we
20 are -- our claims were incorrectly reduced because of the
21 position of your -- on your staff analysis and the Controller
22 is that we should have eliminated local programs. That's not
23 an acceptable answer under the constitution.

24 Contrary to these statements in the staff analysis,
25 we've never taken the position that the Controller does not

1 have the right to audit. What we've said is that they did
2 not conduct an audit. The State Controller merely applied an
3 unsupported presumption that school districts either did or
4 should have eliminated non-science teachers to fund the
5 state's program. An application of this unsupported
6 presumption is not an audit.

7 The State Controller and your staff also contend
8 that the claiming instructions and the parameters and
9 guidelines require school districts to identify any
10 offsetting savings that were a direct result of this
11 mandate. We did; it's zero, and it's on our claim form.

12 The State Controller automatically reduced our claim
13 without requesting any information on the offsetting savings
14 because the Controller's office presumed that we must have
15 had offsetting savings equal to our costs. They had no
16 evidence to support that presumption, have not presented any
17 evidence to support that presumption at any time during this
18 hearing or before this hearing and have not presented
19 anything in writing to support that evidence to date.

20 They never performed an audit or review; they simply
21 applied their unsupported presumptions to deny our costs.
22 After we filed the incorrect reduction claim and after the
23 claims had been reduced, the State Controller and the
24 Commission staff now say that we are required to prove that
25 we did not have any cost savings; this is asking us to prove

1 a negative.

2 Their position is that not that we don't have to
3 prove our costs; we, actually, have proved our costs. They
4 don't deny that we've proved the costs. What they're saying
5 is that we had to prove that we did not have costs savings,
6 and that is not our burden.

7 Under the statutes and regulations that were in
8 effect when these claims were filed and when this test claim
9 was approved, the state had the burden of filing and proving
10 any costs savings claims.

11 The Government Code had a definition of costs
12 savings authorized by the state in former Government Code
13 Section 17514.5. This section has since -- the date of these
14 incorrect reductions have been deleted from the Government
15 Code.

16 The sections we produced for you are in Volume 3 at
17 page 1491. And costs savings in that section was defined to
18 mean "Any decreased costs which a local agency or school
19 district realizes as a result of any statute enacted or any
20 executive order adopted which permits or requires the
21 discontinuance of or the reduction in the level of service of
22 an existing program which was mandated prior to January 1st,
23 1975."

24 So, under this provision, costs savings result only
25 from what are called negative mandates. State statutes or

1 executive orders that relieved the local agency or state --
2 or school district of some previous state requirement. And
3 this is exactly how the Department of Finance in the state
4 administrative manual still defines costs savings. A copy of
5 that definition is found in Volume 3, again, at page
6 1497, and, in that section, it says, "Since savings result
7 from what might be called negative mandates, since local
8 entities are relieved of something that they were previously
9 required to do." Well, chapter 498, the test claim statute,
10 did not relieve the school districts of any state mandated
11 program or any state requirement. It merely authorized, but
12 did not require, school districts to eliminate elective
13 classes and to lay off the teachers who taught those elective
14 classes in order to pay for the state's program.

15 The term "costs savings," as used in the parameters
16 and guidelines adopted by this Commission must have had the
17 same meaning as costs savings in former Government Code
18 Section 17514.5.

19 This is important not only to clarify what is meant
20 by costs savings, but it also is important because the burden
21 of proof that was imposed was on the state to prove costs
22 savings not on districts to prove that there were not costs
23 savings; and that burden is the state's burden. They have
24 not met it.

25 Staff errors by citing a case that deals with tax

1 cases, the burdens of, um -- on taxpayers and tax cases. The
2 case is simply not on point. And it ignores the fact that
3 there was a specific statutory scheme set up in your code to
4 govern with the burden of proof for costs savings.

5 The State Controller's Office didn't deny our claim
6 because we failed to prove our costs; they denied our claim
7 because we showed zero dollars in costs savings which did not
8 fit their presumption that we should have or did have costs
9 savings.

10 They have the burden of proof to show that there
11 were costs savings to rebut our evidence showing that there
12 were no costs savings; we had none, and they had not done
13 so.

14 The declarations that we've provided as the evidence
15 for lack of costs savings were made under penalty of perjury
16 by Peggy Fleck (phonetic), the district's assistant director
17 of staffing, and Jose Gonzales, district's assistant general
18 counsel. They are part of the record. And they state
19 emphatically that the district did not lay off any secondary
20 teachers.

21 So the only way that you can deny this test claim is
22 to find that the district should have eliminated the district
23 programs, local programs, to fund a state mandate, and that,
24 simply, cannot be done under the constitutional scheme
25 approved by the voters.

1 Thank you.

2 CHAIRPERSON PORINI: All right. Ms. Berg?

3 MS. BERG: Nothing more at this time. Thank you.

4 CHAIRPERSON PORINI: Controller's office?

5 MR. SILVA: Thank you. I'd like to make a brief
6 statement and then address the specific comments made by
7 Mr. Cunningham.

8 We've reviewed and carefully considered all the
9 input, and, in our analysis, the staff analysis is correct.
10 We believe what it comes down to, and I think Mr. Cunningham
11 might have alluded to this, is really it's a question of
12 offsetting savings, what that means and what the requirements
13 are, which really comes down to a question of law.

14 We have lots of facts before us, two thousand pages,
15 I think, but it really comes down to the one issue of
16 offsetting savings, to put a label on it. And I think the
17 label might be misused, occasionally. But, when you look at
18 the P's and the G's, the Education Code 5122 -- 25.3, and
19 then, also look at the surrounding statutory and
20 constitutional law, you can see that only a differential is
21 reimbursable, and the reason for this is that it really comes
22 down to the word of "required" which is found in 17514.

23 The reimbursable costs are those which are
24 required. And the question, again, as Mr. Cunningham has
25 pointed towards, is: What is required? And, in this case,

1 where the length of the school day -- no, the length of the
2 school year was increased, the change is only one of emphasis
3 rather than of duration or effort. It's -- you know,
4 depending on the specific school, six class periods in a day,
5 four or five days a week for however many weeks are in a
6 school year, and that hasn't changed. All that the state is
7 requiring is that we ensure that the students have, of all
8 the school classes they take during the four years they're in
9 high school, is that one additional one is science.

10 The only costs required, then, are therefore the
11 costs required to put science in place of one of the classes
12 that is currently there; and that would be simply the
13 difference for the physical plant, improving or making a room
14 or a building capable of being used for science classes and
15 the differentials required if a science teacher would cost
16 more in salary, other associated texts and those kinds of
17 things.

18 I think to go to some of the specific comments made
19 by Mr. Cunningham, quickly, one is that the constitution
20 clearly does not allow for that, and I don't, however, see a
21 direct quote from the language which requires -- which
22 supports that assertion. One of the specific words is that
23 it's a state mandate. And I think if we go back to simple
24 definitions, under Webster's Ninth, a mandate is considered
25 something which is constituting a command or obligatory. And

1 the desire of the school board to retain teaching staff when
2 they're not specifically needed because a science teacher has
3 filled that slot is really a question of whether they choose
4 to. It's not obligated by the statute that they retain --
5 and, in fact, in the same senate bill it provides for the
6 authority to lay off the teacher. And we do agree that
7 that's not mandatory, that they're not required to lay the
8 teach off; however, that provides them an option.

9 And when they choose the option that incurs the much
10 larger cost, that is not required, and, therefore, we do not
11 believe is reimbursable.

12 Mr. Cunningham refers to the fact that we are making
13 a presumption that they've incurred -- or have not incurred
14 costs; however -- or savings, excuse me. However, if we were
15 to act without any evidence in that, we would have to make
16 some assumption. It's -- you know, not to oversimplify the
17 auditor's job, what we have here is A, being the cost for the
18 science teachers, minus B, being the savings for releasing
19 the non-science teacher, equals C, the total cost. And we
20 cannot act without knowing what B is; and, to simply say that
21 B is zero without any support, without any proof that it's
22 mandatory rather than optional, leaves us with an unsolvable
23 formula.

24 We have not presumed the offsetting savings. We
25 don't have evidence one way or the other, and that's what the

1 auditors need to make that final calculation.

2 The reference to costs savings as having some
3 particular magic term, I believe, is erroneous in that when
4 you look at the section referred to, and that would be,
5 specifically, 17514.5, the quote, which we use as the
6 definition, is: Costs savings authorized by the state. And
7 what the claimant attempts to do is to break out individual
8 words but still carry the original meaning of that phrase to
9 when the P's and G's talk about offsetting savings and
10 costs. And that full phrase is not used when we look at the
11 P's and G's or the claiming instruction.

12 And, in fact, it says, "Any savings the claimant
13 experiences as a direct result of this mandate" -- uh, "this
14 statute, must be deducted from costs claimed." So we don't
15 even have the -- we have the word "savings" and I think
16 that's the only word out of that full phrase that we find in
17 the P's and G's. We can't look at the P's and G's alone,
18 though; we do have to look at the overriding constitutional
19 and statutory requirements, which I do think takes us back to
20 the word "required."

21 When they talk about the burden of proof, I'm not
22 sure where they come up with the assertion that it's upon the
23 State Controller to prove that someone who claims funds from
24 the state must somehow be disproved; what we need is we need
25 documentation which supports the claim.

1 For someone, simply, to submit a document asking for
2 money and thus putting the onus on the State Controller's
3 Office I think would lead to an absurdity. Also, one issue,
4 as far as proof goes, is the assertion that they submitted
5 proof that they didn't experience any offset savings or that
6 costs reduction by elimination of non-science teacher;
7 however, that's kind of half the question.

8 Again, we get back to the word "required," and
9 simply saying that they did not lay anybody off does not
10 answer the question of whether they couldn't, whether, it was
11 optional or mandatory, whether because of staffing concerns
12 or the procedures required, they were unable to lay anyone
13 off. So it gets us back, again, to the question of required
14 versus optional. And we believe in the final analysis. What
15 it comes down to is the claimant is attempting to convert an
16 optional expense to one that is required and therefore
17 requires reimbursement, and therefore, we would disagree on
18 that.

19 CHAIRPERSON PORINI: Department of Finance?

20 MR. PETERSEN: Thank you. I think at this point we
21 concur with what the State Controller had to say. I think
22 one of the main points, here, is that there was no increase
23 in instructional time. If you're adding a class and there's
24 no increase in instructional time, then, clearly, there must
25 have been some activity that resulted in some measure of cost

1 savings which the P's and G's require documentation for.

2 You know, other than that, I really don't see that I
3 need to add more to that point.

4 CHAIRPERSON PORINI: All right. Members, questions
5 or comments?

6 MS. STEINMEIER: I have a question.

7 CHAIRPERSON PORINI: Ms. Steinmeier?

8 MS. STEINMEIER: Mr. Cunningham, I'm trying to do
9 the math here on staffing. At the typical high school in
10 San Diego, there are only so many hours in a day, and the
11 only two reasons I can think of why you wouldn't lay anybody
12 off, if you added new classes, would be if your student
13 population is going up, or, number two, somehow you change
14 the teacher-student ratio, by contract, by elective, or
15 whatever; that could end up with a need for additional
16 staff. But it wouldn't be directly related to this mandate;
17 it would be a different issue.

18 So do you know what happened, why they stayed the
19 same?

20 MR. CUNNINGHAM: Well, I think -- even though the
21 class day may be the same, you're still operating a number of
22 elective classes, so you still have to have teachers to staff
23 those classes, so -- I mean, not everybody takes the same
24 classes. It's not like you replaced -- you know, that
25 everybody was taking a wood shop class and now they're not --

1 we're not offering wood shop anymore; we're offering
2 science. I mean, we'd still offer the wood shop classes, or
3 whatever the elective class might be, it's just that -- and
4 you can't really trace where those pupils go, because they
5 will take those elective classes along with the new science
6 class.

7 So you're still going to have -- you can't just look
8 and say, well, the instructional minutes didn't change; it's
9 did the class offerings change? Are you still offering all
10 of the same classes? Maybe, you know, instead of taking two
11 elective classes somebody is taking one elective class, but
12 you're still offering the elective class. Maybe the class
13 size in that elective class will go down. And these are all
14 factors that complicate the matter.

15 MS. STEINMEIER: Right. Maybe San Diego's budget is
16 different than our school district is. The way we look at it
17 is: Student-teacher ratio. We think we've calculated the
18 staffing as lean as we can, and we will add sections, you
19 know, if we see the whites of their eyes, but just because --
20 because you have a new requirement means you would need,
21 maybe, fewer sections of wood shop, or whatever --

22 MR. CUNNINGHAM: Yeah, we may.

23 MS. STEINMEIER: Because, unless your student
24 population -- I go back to my original theory. Unless the
25 student population is growing or the student-teacher ratio,

1 in contractual or budgetary terms, changes, you still need
2 the same number of teachers that you did the previous year;
3 you're just rearranging the deck chairs, so to speak.

4 I understand -- and this is how we do our
5 budgeting. Unless San Diego is a lot more generous with
6 their budgeting, you do it the same way we do it. You try to
7 do it as lean as you can based on the number of students and
8 the student-teacher ratio. And then the internal workings of
9 that school is to work out how those courses are divvied
10 out.

11 But, when you have a new requirement, it shouldn't
12 change that. Help me understand this, because I can't do the
13 math any other way in my own head. I know how I do
14 budgeting, unless I'm making some bad assumptions here.

15 MR. CUNNINGHAM: Yeah, and I'm not sure I can answer
16 that question because I wasn't involved in the budget process
17 back in 1983 when this went into place, so I can't answer
18 that. I can tell that you we researched the records. We did
19 not have any layoffs of any teachers during this period of
20 time; certainly there were no layoffs that were specifically
21 directed or related to this additional science course, so my
22 assumption is that we continued on all those additional
23 classes and incurred the cost.

24 But, even if we didn't, even if we eliminated an
25 elective class, that's still a cost.

1 MS. STEINMEIER: Eliminating a class is a cost?

2 MR. CUNNINGHAM: Sure. You've eliminated options
3 that are available -- you've made me eliminate teachers and I
4 have to add it -- we'd have to go through the costs of
5 eliminating those teachers. In fact, we didn't, but some
6 school districts may have.

7 MS. STEINMEIER: Yeah, I understand. It's a very
8 complicated process and it does cost staff time, depending on
9 how many times you do it. So it isn't as simple as that
10 statute would indicate that you have the option to do it.

11 I also want to -- I want to understand, when the
12 claim was filed with the Controller's office, the actual
13 claim forms, did you consider the additional cost of hiring a
14 science teacher as versus maybe somebody who would teach an
15 elective? I believe there probably would be a difference,
16 because science teachers aren't that easy to come by. You
17 might have had to pay them more, they have more education and
18 all those kinds of things, was that part of the claim?

19 MR. CUNNINGHAM: Well, again, we didn't do any
20 differential calculation because there was no differential
21 to -- what we did take into account, when we filed our
22 claims, is: We aren't claiming every science teacher that we
23 hire. We look at enrollment, how enrollment had changed. We
24 factored that out and looked at class sizes and factored some
25 of those things and how -- we aren't asking for a hundred

1 percent. We're not asking for every teacher we hire as a
2 result of this mandate. We're looking at a proportional
3 amount of those. And it's the same proportional formula that
4 we use and is accepted by the Controller's office when we
5 have been paid for science materials and equipment, and it's
6 exactly the same formula that we use for that; it's just not
7 staffing.

8 Now, as to the question of whether or not there is a
9 mandate, when that decision was made at the test claim stage,
10 there was a mandate, at the parameters and guidelines stage.
11 It says staffing is one of the types of costs that is
12 reimbursable. So, I mean, there's no question there was a
13 mandate. There's no question that staffing is an eligible
14 cost; the only question is whether there were any costs
15 savings and we had none.

16 MS. STEINMEIER: Yes, according to your
17 understanding of it.

18 One of the things that doesn't help your case is
19 that the State Department of Education hypothesized that
20 there would be no costs savings; in other words, there would
21 be such a tradeoff that there would be no costs. In other
22 words, they went through this logic that I just went through
23 with you, that you're going to have the same number of
24 students, the same student-teacher ratio, are you doing
25 this -- substituting an elective teacher for a science

1 teacher?

2 That may be faulty reasoning, but they didn't help
3 you by putting that into the original mix, so to speak. It
4 doesn't support your contention, in other words.

5 MR. CUNNINGHAM: Yeah, that was brought up. The
6 history of this test claim is that the parameters and
7 guidelines were approved, and, indeed, at that time we had to
8 approve the statewide cost estimate before the claiming forms
9 went out, and there were, I think, three separate attempts to
10 get statewide costs estimates through, and both -- the first
11 few times the number was in the several billions of dollars,
12 and, the third time, in order to get the thing going, people
13 said, okay, let's just pick a number and get on with it and
14 we'll work through it with the claims, and that's where the
15 Department of Education's letter came in. It wasn't
16 testimony. It wasn't made in a hearing. Statewide cost
17 estimates are not hearings.

18 MS. STEINMEIER: But it's a part of the record.

19 MR. CUNNINGHAM: It is in the record.

20 CHAIRPERSON PORINI: Mr. Beltrami?

21 MR. BELTRAMI: From your background, Ms. Steinmeier,
22 do you agree with the State Department that apparently you
23 can hire an expensive math teacher and you can lay off an
24 inexpensive teacher and there's no savings -- I mean there's
25 no costs?

1 MS. STEINMEIER: I think that we're just talking
2 about bodies, not about the actual costs, because there's a
3 sheer number of people --

4 MR. BELTRAMI: Well, if it shows the difference
5 between people, you can theorize that Sacramento, the folks
6 who are on the frontline --

7 CHAIRPERSON PORINI: Be careful.

8 MR. BELTRAMI: You filed your report, as required.
9 You stated your costs, and you stated that there were no
10 costs savings?

11 MR. CUNNINGHAM: That's correct.

12 MR. BELTRAMI: And you're the folks who are doing
13 this?

14 MR. CUNNINGHAM: That's correct.

15 MR. BELTRAMI: And I'm hearing now from the
16 Controller's office that there was no costs savings
17 presumptions on their part.

18 MR. CUNNINGHAM: That's their testimony.

19 MR. BELTRAMI: And I think that if there's no costs
20 savings presumption they would accept your figures, or audit,
21 one way or the other, if they had some reason to doubt it,
22 and come up with an answer.

23 CHAIRPERSON PORINI: Mr. Silva?

24 MR. SILVA: If I could clarify? I think what I
25 would be saying is that there's presumption of an exact

1 number, that is dollar for dollar, that, when you hire a
2 science teacher and let go a non-science teacher that you
3 have zero cost.

4 MR. BELTRAMI: But you're presuming that you're
5 letting off the non-science teacher. I mean, there is a
6 presumption.

7 MR. SILVA: That they're letting off -- that they
8 are reducing in accordance -- non-science teacher staffing in
9 accordance with the increase in science staffing teachers,
10 yes, that would be the presumption.

11 MR. BELTRAMI: That would be the presumption.

12 MR. SILVA: But the exact dollar amounts are not
13 presumed.

14 MS. BERG: But, you know, the statute doesn't
15 require that. The statute does not say that you must put
16 science in and let something go. It does not mandate that on
17 the local board. It says that you will add an additional
18 science class to the curriculum. It does not require you to
19 reduce the number of electives.

20 And, as Mr. Cunningham has pointed out several times
21 this afternoon, the difference is: Kids, like at the
22 elementary level, don't come in these nice clumps where you
23 could just easily move them from one place to another. If
24 you've got wood shop and foods and art and all these other
25 things, you might lose one student from this period and one

1 from that and one from someplace else and you would have a
2 science class offered that period. You don't have the nice
3 packaging that we would all like to have arrive.

4 Then you've got another problem. A teacher at the
5 secondary level is not a teacher as a teacher as a teacher.
6 Each of them comes with a unique set of licenses to teach. A
7 science teacher, most times, cannot teach P.E. A science
8 teacher, most times, cannot teach English. A science teacher
9 is licensed, under the current statute, to teach science.

10 And so it's not a simplistic matter as the State
11 Controller's counsel would present it to you, that you simply
12 lay off somebody because you're going to put science in.
13 There is no requirement for us to reduce the number of
14 offerings. The statute does, however, require us to increase
15 our number of offerings by adding an additional science class
16 if the kid is going to graduate.

17 CHAIRPERSON PORINI: Mr. Beltrami?

18 MR. BELTRAMI: The problem, Dr. Berg, is that the
19 bottle is the same size.

20 MS. BERG: But it isn't, really.

21 MR. BELTRAMI: You know, you could have said, well,
22 we've added another hour to the day.

23 MS. BERG: And, in some cases, classes such as
24 weight lifting, athletic activities, and such, are offered at
25 zero periods and seventh periods, and those classes are

1 offered because kids need to have them. We've done the same
2 thing with P.E. classes, offered them zero periods. And
3 so -- although, historically, not every district in the State
4 of California, added additional minutes. The districts have
5 added minutes in zero periods or stretch the day for some
6 kids.

7 MS. STEINMEIER: That's true.

8 CHAIRPERSON PORINI: All right. Questions or
9 comments?

10 Yes. Okay.

11 MS. ARONBERG: (Member Aronberg shakes head.)

12 CHAIRPERSON PORINI: Okay. Do we have a motion?

13 MS. ARONBERG: Move to adopt staff's recommendation.

14 CHAIRPERSON PORINI: Okay. We have a motion.

15 Do we have a second?

16 MR. SHERWOOD: I'll second that motion.

17 CHAIRPERSON PORINI: All right. We have a motion
18 and a second to adopt staff's recommendation.

19 May I have role call -- is there further
20 discussion?

21 (No response.)

22 CHAIRPERSON PORINI: May I have role call.

23 MS. HIGASHI: Mr. Sherwood?

24 MR. SHERWOOD: Aye.

25 MS. HIGASHI: Ms. Steinmeier?

1 MS. STEINMEIER: Aye.

2 MS. HIGASHI: Ms. Aronberg?

3 MS. ARONBERG: Yes.

4 MS. HIGASHI: Mr. Beltrami?

5 MR. BELTRAMI: No.

6 MS. HIGASHI: Ms. Halsey?

7 MS. HALSEY: Aye.

8 MS. HIGASHI: Mr. Lazar?

9 MR. LAZAR: No.

10 MS. HIGASHI: And Ms. Porini?

11 CHAIRPERSON PORINI: Yes.

12 All right. Thank you.

13 MS. BERG: Thank you, very much.

14 MR. CUNNINGHAM: Thank you.

15 MS. HIGASHI: This brings us to Items 17 and 18,

16 and these are two staff reports on the status of the

17 Commission's current rulemaking efforts.

18 Ms. Hart Jorgensen will present Item 17 and

19 Mr. Scribner will present Item 18.

20 MS. JORGENSEN: Good afternoon.

21 "In February 2000, the Commission initiated a

22 rulemaking proposal to establish procedures for dismissal of

23 a pending action, postponed or placed on inactive status at

24 the request of a party or claimant, which is not reactivated

25 within one year from the date of the postponement or

1 placement on inactive status.

2 "On June 29, 2000, the Commission conducted a public
3 hearing on the rulemaking proposal which coincided with the
4 expiration of the 45-day public comment period.

5 "The commentators proposed several clarifying and
6 technical amendments. Staff agrees with most of these
7 suggestions, as reflected in the proposed modified text.
8 Accordingly, staff has amended the proposed regulations to:

9 No. 1: "Extend the time for notice of a dismissal
10 of a test claim was expanded from 60 days to 150 days," the
11 purpose being that the test claim is really more like -- more
12 akin to a class action,

13 No. 2: "Provide that, in the case of the dismissal
14 of a test claim, notice shall be made to all potential
15 claimants."

16 No. 3: "Clarify that another local agency or school
17 district may substitute in as a test claimant," under our
18 existing substitution regulations,

19 No. 4: "Provide that notices of dismissals shall be
20 posted electronically," again, this is for due process, to
21 make sure everyone has an opportunity to come forward or to
22 be aware of it,

23 And, finally, "Provide that postponements made by
24 the Commission or other state agency and postponements made
25 pending the outcome of a similar test claim issue either

1 before the Commission or the courts shall not be included in
2 determining whether a test claim has been postponed or placed
3 on inactive status for more than one year.

4 "Staff recommends that the Commission approve
5 staff's proposed regulatory test as modified after the close
6 of the public comment period and authorize staff to make any
7 technical, none substantive edits to the proposed text
8 resulting from the Commission's action.

9 "If the Commission approves staff's proposed
10 modifications, the modified text will go out for an
11 additional 15-day public comment period. Thereafter, staff
12 will prepare the final proposed text and from the final text
13 to the Commission in September for adoption."

14 Does any of the Commissioners have any questions on
15 the proposed amendments and modifications?

16 CHAIRPERSON PORINI: Questions?

17 Yes, Ms. Steinmeier?

18 MS. STEINMEIER: A quick comment. I want to thank
19 the claimants who participated in this process. It clearly
20 did improve the quality of our statute or changes because
21 they understand what the real practical problems are, and I
22 want to encourage them to do that anytime we can do it this
23 way, because I do -- this one in particular, because we can
24 do it through the final result.

25 Do we need to take any action on that?

1 CHAIRPERSON PORINI: We need to approve this.

2 MS. JORGENSEN: We need to approve it so it'll start

3 the 15-day period.

4 CHAIRPERSON PORINI: Any other comments by members?

5 Did you want to make a motion?

6 MS. STEINMEIER: I was going to. I didn't want to

7 interrupt anybody else's comments. I want to move the -- to

8 approve the changes, the current -- to put them out for

9 comments.

10 MS. ARONBERG: Second.

11 CHAIRPERSON PORINI: We have a motion and a second.

12 Is there further discussion?

13 (No response.)

14 CHAIRPERSON PORINI: All those in favor indicate

15 with "Aye."

16 (Commissioners answered "aye" unanimously.)

17 CHAIRPERSON PORINI: Opposed?

18 (No response.)

19 CHAIRPERSON PORINI: Motion carries.

20 MS. HIGASHI: Mr. Scribner?

21 MR. SCRIBNER: Good afternoon.

22 "In February 2000, the Commission initiated a

23 rulemaking proposal to amend sections 1181.1, 1183, 1183.05,

24 1183.12, 1185, 1185.01, 1185.02, 1185.2, and 1188.4 of its

25 regulations. The proposed action is necessary to interpret,

1 implement, and make specific statutes of 1999, Chapter 643,
2 also known as AB 1679.

3 "On July 27, 2000, the Commission conducted a public
4 hearing on the rulemaking proposal, which coincided with the
5 expiration of the 45-day public comment period.

6 "The commentators proposed several clarifying and
7 technical amendments. Staff agrees with some of these
8 suggestions, as reflected in the proposed modified text.
9 Accordingly, staff has amended the proposed regulations to:

10 "Require inclusion of prior state Board of Control
11 and Commission decisions in test claim filings;

12 "Give the executive director 45 days to consolidate
13 or sever part of any test claim;

14 "Clarify that claimants have 30 days to resubmit a
15 completed incorrect reduction claim; and

16 "Clarify that the power to order reconsideration of
17 a prior test claim includes the power to amend a test claim
18 decision.

19 "Staff recommends that the Commission approve
20 staff's proposed regulatory text as modified after the close
21 of the public comment period and authorize staff to make any
22 technical, none substantive edits to the proposed text
23 resulting from the Commission's action.

24 "If the Commission approves staff's proposed
25 modifications, the modified text will go out for an

1 additional 15 day public comment period. Thereafter, staff
2 will prepare the final proposed text and from the final text
3 to the Commission in September for adoption."

4 CHAIRPERSON PORINI: Questions from members?
5 Comments?

6 MS. STEINMEIER: Actually, I have a question.

7 CHAIRPERSON PORINI: Ms. Steinmeier?

8 MS. STEINMEIER: David, did you just say that the
9 executive director would have 45 days?

10 MR. SCRIBNER: Yes.

11 MS. STEINMEIER: Oh, I might be reading the wrong
12 thing. I saw 60 days. Am I looking at a different item, a
13 different bullet? Where are you looking at?

14 MR. SCRIBNER: I'm looking at page 5, 1183.05,
15 subdivision (b), subdivision (c). We split that baby on that
16 one.

17 MS. STEINMEIER: Now I understand why I was
18 confused. There's so many time lines you have to keep them
19 separate.

20 MR. SCRIBNER: Yes.

21 MS. STEINMEIER: I got it. Thank you. That was my
22 last question.

23 CHAIRPERSON PORINI: All right. Any other questions
24 or comments?

25 Again, you'd like us to approve this item.

1 MR. SHERWOOD: Move for approval.

2 MS. HALSEY: Second.

3 CHAIRPERSON PORINI: Okay. We have a motion and a
4 second.

5 All those in favor indicate with "Aye."

6 (Commissioners answered "aye" unanimously.)

7 CHAIRPERSON PORINI: Opposed or abstained?

8 (No response.)

9 CHAIRPERSON PORINI: Item carries.

10 MS. HIGASHI: This brings us to Item 19, the last
11 item on the agenda. It's the executive director's report.
12 All of you have copies of it in your binder. It's the
13 standard report pending legislation. There's an update, in
14 terms of parameters and guidelines. We did meet with
15 representatives of all of the parties, most of the
16 consultants, who were at another prehearing conference last
17 month, so we took the opportunity to talk about the issue of
18 training. And what we decided to do was not to convene any
19 specific workshop on training but we would take it up on a
20 case by case basis. We have some parameters and guidelines
21 that will be coming forward in the next couple of months.
22 And, as those come up, claimants will probably have proposed
23 changes to what had previously been perceived as boilerplate
24 language, and so we'll just take them up on a case-by-case
25 basis on that.

1 But, at this point, unless the claimants who's met
2 over the week and came to a different conclusion, that's my
3 understanding of where we are.

4 Regarding the staffing, we have started to collect
5 positions. We still have positions to fill, and we're in the
6 midst of interviewing and reference checking and whatnot
7 still.

8 We have in our audience one of our new staff
9 services analyst; I'd like to introduce her, Kathy Cruz
10 (phonetic), please stand.

11 Kathy's here because she'll be working on the
12 incorrect reduction claims, so she's been learning.

13 In terms of the future agendas, the September agenda
14 is listed on page 3 of the executive's director's report. We
15 expect some changes in that agenda. We have some prehearing
16 conferences scheduled on some of the proposed items for
17 September.

18 CHAIRPERSON PORINI: And we will be adding the item
19 that we carried over?

20 MS. HIGASHI: Yes. I've added that item in my notes.

21 CHAIRPERSON PORINI: And so just a reminder to
22 members to keep your binders on that item.

23 MR. BELTRAMI: Madam Chair, I'll be on vacation in
24 September. Do I have to keep my binder?

25 CHAIRPERSON PORINI: No, not if you're on vacation.

1 Okay.

2 MS. HIGASHI: Otherwise, if you leave your materials
3 here, write your name on the cover. You'll get them back.

4 CHAIRPERSON PORINI: Thank you.

5 MS. HIGASHI: Are there any questions? We do expect
6 a fairly detailed agenda. There will be a number of proposed
7 consent items, we expect.

8 CHAIRPERSON PORINI: All right. Well, for both
9 members and claimants, I just want to congratulate staff,
10 even though our hearing has been quite lengthy today, I think
11 you will find that we are covering a lot of items each time
12 and eliminating some of that backlog work that we were
13 concerned about, as all the claimants were. So we appreciate
14 staff's hard work on that.

15 MS. HIGASHI: Thank you.

16 MR. BELTRAMI: Paula, just one question, on the
17 workload figures, under 12, the appeal of the executive
18 director's decision, is that the item that we did today?

19 MS. HIGASHI: Yes, that's the item we did today.

20 MR. BELTRAMI: So that's not a zero on that.

21 MS. HIGASHI: No, there's no zero next to it,
22 unless --

23 MR. BELTRAMI: Good. Thank you.

24 CHAIRPERSON PORINI: All right. Any other questions
25 or comments?

1 (No response.)

2 CHAIRPERSON PORINI: Okay. Then are there any
3 comments from the members of our audience?

4 (No response.)

5 CHAIRPERSON PORINI: All right. With that, we will
6 be adjourning into a closed executive session. This
7 Commission will now meet in closed executive session pursuant
8 to Government Code Section 11126 subdivision (e) to confer
9 with and receive advice from legal counsel in consideration
10 and action as necessary and appropriate upon the pending
11 litigation listed on the published notice and agenda; and,
12 Government Code Section 11126 subdivision (a) and 17527 to
13 confer on personnel matters listed on the published notice
14 and agenda.

15 Thank you very much.

16 (Whereupon the Commission met in closed executive
17 session.)

18 CHAIRPERSON PORINI: Okay. If we're ready to go,
19 I'm going to report that the Commission met in closed
20 executive session pursuant to Government Code 11126
21 subdivision (e) to confer with and receive advice from legal
22 counsel, to report, in consideration and action as necessary
23 and appropriate upon the pending litigation listed on the
24 published notice and agenda; and, Government Code section
25 11126 subdivision (a) and 17527 to confer on personnel

1 matters listed on the published notice and agenda.

2 If there's no further business to come before the
3 Commission, we're adjourned.

4 Thank you.

5 (Whereupon the hearing concluded at 3:45 p.m.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)
_____)

I, STACEY L. HEFFERNAN, certify that I was the official court reporter for the proceedings named herein; and that as such reporter, I reported to the best of my ability, in shorthand writing, of those proceedings; that thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 149, herein constitute a complete, true and correct record of the proceedings:

PRESIDING OFFICER: Annette Porini, Chairperson

JURISDICTION: Commission on State Mandates

CAUSE: August 24, 2000 agenda and related items

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 1st day of September, 2000.

STACEY L. HEFFERNAN, CSR, RPR
NO. 10750

ERRATA SHEET

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